APPENDIX A

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

Nos. 01-1327, 02-1006, 02-1007, 02-1051 to 02-1053, 02-1072 to 02-1076.

WILLIAMS GAS PROCESSING—GULF COAST COMPANY, L.P. AND TRANSCONTINENTAL GAS PIPE LINE CORPORATION,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

DYNEGY MARKETING AND TRADE, *et al.*,
Intervenors.

Argued May 12, 2003.
Decided June 20, 2003.

On Petition for Review of Orders of the Federal Energy Regulatory Commission

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Thomas J. Eastment argued the cause for petitioners/intervenors Producer. With him on the briefs were *Joshua B. Frank*, *James M. Costan*, *T. Alana Deere*, *Timothy J. Jacquet*, *Joseph E. Mixon*, *Frederick T. Kolb*, *Douglas W. Rasch*, and *Charles J. McClees, Jr.* *Linda L. Geoghegan* entered an appearance.

Joseph S. Koury argued the cause for petitioners/intervenors Williams Gas Processing-Gulf Coast Company,

L.P., *et al.* With him on the briefs were *James T. McManus*, *Mari M. Ramsey*, *Gisela B. Cherches* and *David A. Glenn*.

David H. Coffman, Attorney, Federal Energy Regulatory Commission, argued the cause for respondent. With him on the brief were *Cynthia A. Marlette*, General Counsel, and *Dennis Lane*, Solicitor.

Before: GINSBURG, Chief Judge, and ROGERS and TATEL, Circuit Judges.

Opinion for the Court filed by Circuit Judge ROGERS.

ROGERS, Circuit Judge.

Transcontinental Gas Pipe Line Corp. ("Transco") petitioned the Federal Energy Regulatory Commission ("FERC") for approval to transfer some of its pipeline facilities to its affiliate, Williams Gas Processing-Gulf Coast Co. ("WGP"), and to certify that the facilities serve gathering rather than transmission functions. FERC approved the applications in part and denied them in part, and Transco and WGP now challenge the portions of the orders that denied the requests, contending that FERC's assertion of jurisdiction is contrary to precedent regarding the exemption of gathering facilities under the Natural Gas Act ("NGA"), 15 U.S.C. § 717(b) (2000). A coalition of natural gas producers ("the Producers") also petitions the court for review, objecting to those portions of FERC's orders that granted the abandonment and reclassification of facilities as gathering for lack of a reasoned determination and as contrary to the public interest. Our review of these petitions is instructed by *ExxonMobil Gas Marketing Co. v. FERC*, 297 F.3d 1071, 1084 (D.C.Cir. 2002), where the court stated that it will defer to FERC's reasonable determinations regarding gathering status under NGA section 1(b), 15 U.S.C. § 717(b). We hold that petitioners fail to demonstrate that FERC's choices are "unreasonable and its chosen line[s] of demarcation [are] not within a 'zone of reasonableness' as distinct from the question of whether

the line[s] [are] 'precisely right.'" *ExxonMobil*, 297 F.3d at 1084; *see Conoco Inc. v. FERC*, 90 F.3d 536, 544 (D.C.Cir.1996). Accordingly, we deny the petitions inasmuch as FERC considered the appropriate factors under the primary function test and sufficiently explained its reasoning.

I.

Section 1(b) of the NGA distinguishes between facilities that are used for "the transportation of natural gas in interstate commerce," which are subject to FERC's jurisdiction, and those used for "gathering," which are not. 15 U.S.C. § 717(b). "Gathering" is generally defined as "the process of taking natural gas from the wells and moving it to a collection point for further movement through a pipeline's principal transmission system." *Conoco*, 90 F.3d at 539 n. 2 (citing *Northwest Pipeline Corp. v. FERC*, 905 F.2d 1403, 1404 n. 1 (10th Cir.1990)). Although "[t]he line between jurisdictional transportation and nonjurisdictional gathering is not always clear," *Conoco*, 90 F.3d at 542, it is central to this case.

Since 1983, FERC has used a multi-factor "primary function test" to determine "whether a facility is devoted to the collection of gas from wells—gathering—or to the further ('downstream') long-distance movement of gas after it has been collected—interstate transportation." *Conoco*, 90 F.3d at 543 (citing *Farmland Indus., Inc.*, 23 F.E.R.C. ¶ 61,063, at 61,143, 1983 WL 39391 (1983); *Amerada Hess Corp.*, 52 F.E.R.C. ¶ 61,268, at 61,987-88, 1990 WL 1241336 (1990)). Under the primary function test, FERC considers six physical criteria: (1) the pipelines' length and diameter; (2) the central point in the field; (3) the facility's geographic configuration or pattern; (4) the location of compressors and processing plants, particularly where the pipelines are located behind the plant; (5) the location of wells along all or part of the facilities; and (6) the line's operating pressure. *ExxonMobil*, 297 F.3d at 1077 (citing *Lomak Petroleum, Inc. v. FERC*, 206 F.3d 1193, 1196 (D.C.Cir.2000)). FERC also accounts for

certain nonphysical factors, including: (1) the facility's purpose, location, and operation; (2) the pipeline owner's general business activity; (3) the objectives of the NGA and other pertinent legislation; and (4) the changing technical and geographic nature of exploration and production activities. *ExxonMobil,* 297 F.3d at 1077. No single criterion is dispositive, and not all of the factors apply in all situations. *Id.* (citing *Williams Field Servs. Group, Inc. v. FERC,* 194 F.3d 110, 116 (D.C.Cir.1999); *Conoco,* 90 F.3d at 543).

FERC initially developed the primary function test for classifying onshore facilities, and it later modified the test in considering the increasing number of pipelines that were being constructed offshore on the Gulf of Mexico's Outer Continental Shelf ("OCS"), where gathering and distribution patterns are somewhat different. *ExxonMobil,* 297 F.3d at 1077 (citing *EP Operating Co. v. FERC,* 876 F.2d 46 (5th Cir.1989)). Because offshore pipelines often must transport raw gas over longer distances, FERC adopted a "sliding scale" approach that permitted gathering pipelines of greater length and diameter in correlation with distance from shore and water depth. *ExxonMobil,* 297 F.3d at 1078 (citing *Amerada Hess,* 52 F.E.R.C. at 61,988). When FERC applied this modified approach in determining that the Sea Robin Pipeline Company's pipelines were jurisdictional transmission facilities, the Fifth Circuit reversed, questioning FERC's heavy emphasis on the facilities' size and on nonphysical factors and inviting FERC to reformulate its primary function test in light of the "physical, geographical and operational characteristics of pipelines in the OCS." *Sea Robin Pipeline Co. v. FERC,* 127 F.3d 365, 369-71 (5th Cir.1997). On remand, FERC determined that the "behind-the-plant" test is not determinative of the gathering question offshore, and that instead it would look at the offshore system's configuration to locate a central point where gas is aggregated for transportation onshore. *Sea Robin Pipeline Co.,* 87 F.E.R.C. ¶ 61,384, at 62,425, 1999 WL 444654 (1999) (*Sea Robin II*). FERC

explained that this central aggregation point is analogous to the "central-point-in-the-field" criterion for onshore systems and should be "given weight in identifying the demarcation point between gathering and transportation on OCS pipeline systems." *Id.* at 62,426. FERC also emphasized that it would focus primarily on physical factors, according only secondary importance to nonphysical factors. *Sea Robin Pipeline Co.*, 92 F.E.R.C. ¶ 61,072, at 61,284, 2000 WL 1100267 (2000). This court subsequently held that FERC reasonably applied its reformulated primary function test to the Sea Robin system. *ExxonMobil*, 297 F.3d at 1087.

It was against the backdrop of the evolving primary function test and the distinction between jurisdictional transmission and exempt gathering facilities that Transco and WGP filed the applications at issue. In the parlance of the oil and gas industry, a "spindown" occurs when a natural gas transporter transfers operation of its facilities to a gathering affiliate. *See Conoco*, 90 F.3d at 541. In 1996, Transco sought FERC's authorization, pursuant to NGA section 7(b), 15 U.S.C. § 717f(b), to spin down a number of its facilities to WGP as part of a comprehensive corporate restructuring plan. Transco's application covered a large number of its facilities on seven different pipeline systems in Texas and Louisiana and offshore on the OCS. On the same day, WGP petitioned FERC for an order declaring that the facilities it intended to acquire from Transco—most of which FERC had previously certificated as transmission facilities under section 7(c) of the NGA—were gathering facilities exempt from its jurisdiction under section 1(b).

FERC dismissed the comprehensive application without prejudice. *Transcon. Gas Pipe Line Corp.*, 76 F.E.R.C. ¶ 61,317, at 62,543, 1996 WL 544775 (1996) ("Comprehensive Order"). FERC observed that "[t]he physical parameters of the subject facilities are massive and complex, involving over 3,100 miles of pipeline," and that the number of facili-

ties included in Transco's application "is without precedent in prior 'spin-down' cases." *Id.* (footnote omitted). Explaining that important differences existed among the many pipelines that Transco included in its application, and that, "[a]t the very minimum, large portions of the facilities are clearly properly classified as jurisdictional transmission facilities," *id.* at 62,543, FERC also noted that "a decision to grant the requested abandonment in this case could set a precedent for ending NGA jurisdiction on the OCS, as it is likely that virtually every similar interstate pipeline on the OCS then would file a similar application." *Id.* at 62,542. Because "[n]either Transco nor WGP included in [its] pleadings an alternative request that [FERC] find specific parts of the facilities to be . . . nonjurisdictional," FERC dismissed the comprehensive application while stating that Transco and WGP could still file "another proposal requesting that [FERC] consider discrete portions of the facilities . . . to be gathering." *Id.* at 62,543. FERC denied the request for rehearing, noting that "the parties [did] not seek to parse the Transco facilities; rather, they continue[d] to insist that [FERC] should find all the facilities at issue to be gathering." *Transcon. Gas Pipe Line Corp.*, 95 F.E.R.C. ¶ 61,396, at 62,475-76 & n.3, 2001 WL 672549 (2001) ("*Comprehensive Rehearing Order*").

Transco and WGP then filed three sub-spindown applications seeking permission to abandon and to reclassify discrete portions of the Transco systems. FERC approved the spindown of the North Padre Island and Central Texas Systems. *Transcon. Gas Pipe Line Corp.*, 96 F.E.R.C. ¶ 61,115, at 61,429, 2001 WL 840622 (2001) ("*North Padre/Central Texas Order*"). Relying on the reformulated primary function test set forth in *Sea Robin II*, 87 F.E.R.C. ¶ 61,384 (1999), FERC determined that each system featured a central aggregation point demarcating gathering and transmission functions. *North Padre/Central Texas Order*, 96 F.E.R.C. at 61,440-41, 2001 WL 840622 (2001). FERC applied similar

reasoning in approving Transco's abandonment of portions of the North High Island and West Cameron systems, again pinpointing central aggregation points and identifying some, but not all, of the pipelines as serving gathering functions. *Transcon. Gas Pipe Line Corp.*, 96 F.E.R.C. ¶ 61,118, at 61,449, 61,458-60, 2001 WL 840621 (2001) ("*North High Island/West Cameron Order*"). Finally, FERC approved Transco's requested abandonment of the Central Louisiana facilities and, upon locating a central aggregation point at Vermilion Block 67, designated part of the system as gathering. *Transcon. Gas Pipe Line Corp.*, 96 F.E.R.C. ¶ 61,246, at 61,966, 2001 WL 34078519 (2001) ("*Central Louisiana Order*"). Transco and WGP sought rehearing of those portions of the orders that designated parts of the systems as transmission facilities, and the Producers sought rehearing of the gathering determinations. FERC denied the rehearing requests. *Transcon. Gas Pipe Line Corp.*, 97 F.E.R.C. ¶ 61,296, 2001 WL 1631914 (2001), *order on reh'g, North Padre/Central Texas Order*; *Transcon. Gas Pipe Line Corp.*, 97 F.E.R.C. ¶ 61,298, 2001 WL 1631916 (2001), *order on reh'g, Central Louisiana Order*; *Transcon. Gas Pipe Line Corp.*, 97 F.E.R.C. ¶ 61,300, 2001 WL 1631918 (2001), *order on reh'g, North High Island/West Cameron Order*.

II.

Transco and WGP contend that FERC erred in rejecting their initial comprehensive application and improperly determined in the sub-spindown proposals that portions of the facilities were transmission rather than gathering. In considering these objections, the court will sustain FERC's factual findings if they are supported by "substantial evidence," 15 U.S.C. § 717r(b); *Louisiana Ass'n of Indep. Producers & Royalty Owners v. FERC*, 958 F.2d 1101, 1115 (D.C.Cir. 1992) (per curiam), and will set aside FERC's actions if they are arbitrary and capricious, *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S.Ct.

2856, 2866-67, 77 L.Ed.2d 443 (1983). The court also applies *Chevron*'s familiar two-step framework to FERC's interpretation of section 1(b) of the NGA. *ExxonMobil*, 297 F.3d at 1083 (citing *Chevron, U.S.A. Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)). Moreover, the court is mindful that in "evaluating and balancing the several factors under the primary function test, [FERC] brings to bear its considerable expertise about the natural gas industry." *Conoco*, 90 F.3d at 544 (citations omitted). Consequently, "[t]he burden is on the petitioners to show that [FERC's] choices are unreasonable and its chosen line of demarcation is not within a 'zone of reasonableness' as distinct from the question of whether the line drawn by [FERC] is 'precisely right.'" *ExxonMobil*, 297 F.3d at 1084 (citations omitted).

A.

According to Transco and WGP, FERC misconstrued the comprehensive application as an "all or nothing" request -- in other words, FERC misunderstood Transco and WGP as requesting that FERC allow them to abandon and reclassify all of their facilities or none at all. Transco and WGP maintain that their filings contained no such "all-or-nothing" contingency. Because Transco and WGP failed to object to FERC's all-or-nothing characterization in seeking rehearing, they are precluded from raising this argument here. Section 19(b) of the NGA, 15 U.S.C. § 717r(b), bars the court from considering on review any objection that was not raised on rehearing, without good cause shown. *Fed. Power Comm'n v. Colorado Interstate Gas Co.*, 348 U.S. 492, 497-99, 75 S.Ct. 467, 470-71, 99 L.Ed. 583 (1955); *ASARCO v. FERC*, 777 F.2d 764, 774-75 (D.C.Cir.1985). Transco and WGP sought rehearing, challenging FERC's denial of the comprehensive application on a number of grounds, but, despite FERC's invitation to clarify that they were making an alternative request that FERC find that some parts of the

facilities perform a gathering function, Transco and WGP nowhere requested that FERC sever the comprehensive application. Having filed a rehearing request that implicitly accepted the *Comprehensive Order*'s all-or-nothing understanding, and not having shown good cause for failing to raise their severance argument before the agency, Transco and WGP are barred from challenging that understanding before the court. *See ASARCO*, 777 F.2d at 775.

FERC therefore was forced either to declare that all of the facilities at issue performed a gathering function or to deny the comprehensive application altogether. In this posture, jurisdiction and merits overlap, for the court must consider the merits of FERC's decision that at least one of the facilities performed a transmission function, thereby precluding approval of the all-or-nothing petition. FERC's decision in the *Comprehensive Order* was driven by the primary function analysis: FERC considered the relevant factors—including pipeline size and length, volume of gas, and water depth—and relied on no irrelevant factors. *Comprehensive Order*, 76 F.E.R.C. at 62,542-43 & nn. 9-12. Transco and WGP contend that FERC was preoccupied with size, without regard to the "sliding scale" analysis required by *EP Operating*, 876 F.2d at 48-49. On the contrary, FERC's orders demonstrate that FERC was concerned with the transmission function of the pipelines located closest to shore, in the shallowest waters, *id.* at 62,543—precisely the type of analysis contemplated by the sliding scale approach, *ExxonMobil*, 297 F.3d at 1078 (citing *Amerada Hess*, 52 F.E.R.C. at 61,988). Specifically, FERC found that Transco and WGP had "not adequately explained how . . . existing interstate pipeline facilities that are not located in deep OCS waters, *i.e.*, waters in excess of 200 meters, can properly be reclassified as gathering lines under the 'primary function' test." *Comprehensive Order*, 76 F.E.R.C. at 62,543. In light of this analysis, it was reasonable for FERC to conclude that, "[a]t the very minimum, large portions of the facilities are

clearly properly classified as jurisdictional transmission facilities." *Id.*

B.

Regarding two of the three sub-spindown proposals, Transco and WGP contend that FERC erred by failing to recognize the physical realities of gathering exhibited by all of the pipelines addressed in the *Central Louisiana Order* and the *North High Island/West Cameron Order,* and thus failed properly to apply the modified primary function test for offshore gathering systems. *See EP Operating Co.,* 876 F.2d at 48-49; *Amerada Hess,* 52 F.E.R.C. ¶ 61,268, 1990 WL 1241336 (1990).

Transco and WGP contend that the *Central Louisiana Order* was in error for two primary reasons. First, they claim that FERC neglected to apply *Amerada Hess*'s sliding-scale approach, which was designed to "allow the use of gathering pipelines of increasing lengths and diameters in correlation to the distance from shore and the water depth of the offshore production area." *Amerada Hess,* 52 F.E.R.C. at 61,988. Transco and WGP maintain that FERC failed to recognize that the Central Louisiana system's spine-and-lateral configuration is characteristic of a gathering function, regard-less of whether the system is on-or offshore, and that the offshore pipelines are longer and larger only because of the distances involved, not because their function is different. Second, Transco and WGP contend that in concluding that Vermilion Block 67 marks the central aggregation point at which the offshore lines convert from gathering to transmission, FERC ignored the fact that the offshore pipelines are part of the spine-and-lateral gathering system, and that the Cow Island Junction is the proper point of central aggregation.

Because "[i]t is for [FERC], in the first instance, to determine the patterns of gathering and transportation in the

offshore context," the court is "generally 'unwilling to review line-drawing performed by [FERC] unless a petitioner can demonstrate that lines drawn . . . are patently unreasonable, having no relationship to the underlying regulatory problem.'" *ExxonMobil*, 297 F.3d at 1085 (quoting *Cassell v. FCC*, 154 F.3d 478, 485 (D.C.Cir.1998)). The *Central Louisiana Order* makes clear that FERC properly considered the facilities' diameter (sixteen and twenty inches), length (forty- two miles), and the source of the pipelines' pressure (from the wellhead), as well as the absence of processing plants (which, FERC explained, means little offshore). 96 F.E.R.C. at 61,976. Transco and WGP have not carried their burden of showing that FERC's determination falls outside of a "zone of reasonableness." *ExxonMobil*, 297 F.3d at 1084. The court in *ExxonMobil* affirmed FERC's use of the central-aggregation-point test for offshore systems, *id.* at 1087, and a map of the Central Louisiana system shows that FERC reasonably concluded that the entire system features two aggregation points—one at Vermilion Block 67 and the other at Cow Island Junction. Given the system's configuration -- a spine-and-lateral system in which many smaller pipelines branch off of a central "spine"—it was permissible for the Commission to find that some of the pipelines assume a transmission function when they converge at Vermilion Block 67, while others serve a gathering purpose until they reach Cow Island. 96 F.E.R.C. at 61,977. "Reasonable people may disagree as to where gathering ends and transportation begins," and this court will not substitute its judgment for a FERC determination that is not "patently unreasonable." *ExxonMobil*, 297 F.3d at 1085; *see also Conoco*, 90 F.3d at 544.

The same deference principles apply to FERC's findings in the *North High Island/West Cameron Order*. This system is shaped like an inverted "Y" with two "legs"—the North High Island pipelines to the west and the West Cameron pipelines to the east—that converge onshore at the Station 44/Cameron

Meadows complex. FERC determined that only a portion of the North High Island subsystem is nonjurisdictional, locating a central aggregation point at Block 10, *North High Island/West Cameron Order,* 96 F.E.R.C. at 61,458-59, and that the entirety of the West Cameron subsystem serves a transmission function, *id.* at 61,459. Transco and WGP contend that FERC erred by evaluating the east and west legs independently rather than treating the Station 44/Cameron Meadows complex as the central aggregation point. According to Transco and WGP, the entire system, like the *Sea Robin* system, must be evaluated as a whole, and FERC cannot view each leg of the "Y" independently. But FERC explained that the two subsystems "generally operate independently, with the North High Island facilities collecting gas from the west in Offshore Texas and the West Cameron facilities collecting gas from the east in Offshore Louisiana." *Id.* at 61,458. Then, in assessing each subsystem, FERC noted the differences between the two. FERC reasonably concluded, in light of these differences, that the subsystems serve transmission functions before converging at the Station 44/Cameron Meadows complex. As in *ExxonMobil,* it was permissible for FERC to conclude "that different parts of the system required different jurisdictional treatment." *Exxon Mobil,* 297 F.3d at 1085.

Transco and WGP next contend that FERC improperly designated a central aggregation point on the North High Island facility rather than finding the whole facility to be gathering. FERC explained that "[t]he North High Island subsystem consists of approximately 174 miles of 4 to 30-inch pipeline," most of which is "relatively small, with the lines ranging from 4 to 24-inches in diameter." *North High Island/West Cameron Order,* 96 F.E.R.C. at 61,458. "The longest segment is a 63 mile, 24-inch Line C that connects all the upstream facilities with the plant complex onshore." *Id.* FERC concluded that "[a]lthough the North High Island Block 10 point does not exhibit as strong an indication of a

marked physical change in facilities as was the case in *Sea Robin*," the interconnection of the 24-inch Line C with a 12-mile, 16-inch line at Block 10 nonetheless "serves as the central point of aggregation for the subsystem, where all the gas gathered upstream is delivered to a single point for transportation onshore." *Id.* at 61,458-59. In reaching this conclusion, FERC considered the length and diameter of the pipeline, the volume of gas transmitted, the shape of the subsystem, and the gas pressure. *Id.* at 61,459. Given that FERC considered the pertinent factors, its conclusion was not arbitrary and capricious. *See Conoco,* 90 F.3d at 544.

Transco and WGP further contend that FERC erred in concluding that all of the West Cameron facility is transmission. In assessing the West Cameron facility, FERC considered the length, diameter, and pressure of the pipeline on the West Cameron subsystem; the location of wells and lack of processing plants along the line; and the shape of the long, continuous pipeline connecting production in the OCS to the onshore processing facilities. *North High Island/West Cameron Order,* 96 F.E.R.C. at 61,459-60. Based on these factors, FERC found "that the West Cameron subsystem's primary function is that of a transmission facility, not a gathering one." *Id.* at 61,460. This conclusion was not arbitrary and capricious.

Transco and WGP contend, finally, that FERC failed to comply with its own precedent when it ignored the historical evolution of the Central Louisiana and North High Island/ West Cameron systems in determining their primary function. In *Enron Gulf Coast Gathering L.P.,* 95 F.E.R.C. ¶ 61,318, 2001 WL 586951 (2001), FERC stated that the fact that the pipelines in question "were built in separate stages over a number of years after" the original system's construction "in order to access new gas supplies on the OCS also speak[s] to their primary gathering function." *Id.* at 62,097 (footnote omitted). Transco and WGP contend that, consistent with that

precedent, they presented FERC with detailed evidence showing that the systems' history and evolution suggest a primary gathering function. But FERC did not err in according little weight to this factor. Although FERC recognized in *Enron* that the historical evolution of the pipeline system may be relevant, it has not traditionally been a criterion in the primary function test. *See ExxonMobil,* 297 F.3d at 1077. Moreover, as FERC notes, the Fifth Circuit instructed FERC to afford nonphysical factors, such as a system's historical evolution, only secondary importance. *Sea Robin,* 127 F.3d at 371. In any event, this court has observed that "the historical classification" of a system is "of limited utility" in "'the wake of major regulatory changes in the natural gas industry'" effected by Order No. 636, *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipelines After Wellhead Decontrol,* F.E.R.C. Stats. & Regs. ¶ 30,939, *reh'g granted in part,* Order No. 636-A, F.E.R.C. Stats. & Regs. ¶ 30,950, *reh'g denied,* Order No. 636-B, 61 F.E.R.C. ¶ 61,272, 1992 WL 509683 (1992), *aff'd in part, rev'd in part sub nom. United Distrib. Cos. v. FERC,* 88 F.3d 1105 (D.C.Cir. 1996) (per curiam) ("Order No. 636"). *ExxonMobil,* 297 F.3d at 1086-87 (quoting *Conoco,* 90 F.3d at 539). For reasons we explain in Part III, this analysis applies to Transco's facilities. Thus, FERC did not err in declining to classify the lines as gathering on the basis of their historical evolution.

III.

The Producers challenge approval of the abandonment and reclassification of Transco's facilities on the grounds that FERC: (1) failed to find that a change in circumstances justified revisiting an earlier classification of Transco's facilities as gathering; (2) misapplied the reformulated primary function test; and (3) neglected to conduct a

sufficient public interest analysis. Each of these contentions lacks merit.

FERC has stated that "[e]xisting interstate pipelines and gathering facilities [will] retain their status barring some change in circumstances . . . ." *Gas Pipeline Facilities and Services on the Outer Continental Shelf,* 74 F.E.R.C. ¶ 61,222, at 61,757, 1996 WL 85454 (1996) ("*OCS Policy Statemen*"). According to the Producers, Transco requested in 1990 that FERC certificate its facilities as transmission when Transco was restructuring from a merchant to a transporter. Because FERC granted Transco's request, the Producers maintain, the *OCS Policy Statement* required FERC to find that a change in circumstances justified revisiting the certification decision.

FERC explained in the orders on review that Order No. 636, which promoted the unbundling of pipeline services, effected significant changes in the industry, and that those changes justified Transco's abandonment request. *E.g., North Padre/Central Texas Order,* 96 F.E.R.C. at 61,434. FERC noted that Transco had sought to certificate its pipelines as transmission at a time when "Transco did not have a need to precisely distinguish between jurisdictional transmission and exempt gathering facilities," because those services could be bundled. *Id.* at 61,431. But "Transco, like many interstate pipelines, found after restructuring its system consistent with Order No. 636, and moving from a bundled, merchant function to an unbundled, transportation function, that it no longer needed all of its existing system facilities." *Id.* at 61,434. FERC accordingly found that Transco's requested spindown was reasonable "because [its] facilities are no longer necessary for the service it currently provides." *Id.*

FERC's explanation is consistent with the major industry changes wrought by Order No. 636. In *ExxonMobil,* for instance, the petitioners complained that FERC failed "to give weight to the previously 'settled status' of the classification

of [the facilities in question] as engaged in jurisdictional transportation." *ExxonMobil,* 297 F.3d at 1086. But the court observed that "[w]hen interstate gas pipelines served the multi-function role of purchasing, gathering, transporting. and re-selling natural gas, *i.e.* bundled sales, the transportation/ gathering jurisdictional question may have been of less consequence." *Id.* (citation omitted). The court then explained that FERC "has been struggling with the reclassification of facilities in the wake of the unbundling of gas sales and interstate transportation in Order No. 636." *Id.* at 1087 (citing *Conoco,* 90 F.3d at 539-41). Because Order No. 636 took effect after Transco's certification, the changes effected by the Order then were sufficiently significant to justify FERC's revisiting of Transco's classifications. The Producers object that if this rationale is accepted, then all prior determinations of transmission/gathering status could potentially be reopened, thereby upsetting producers' reliance and repose interests. Even so, the objection confirms the understanding that Order No. 636 worked a substantial change in the industry; it does not provide a reason for declining to revisit Transco's certification.

Furthermore, in light of the court's upholding in *Exxon Mobil,* 297 F.3d at 1087, of FERC's modified primary function test as reasonable, the Producers' contention that FERC's orders are founded on a flawed reformulation of the primary function test necessarily fails. Similarly, the Producers' contention that FERC misapplied the primary function test by according determinative weight to the central aggregation point factor also fails. Although FERC maintains that the Producers waived this challenge by failing to raise it on rehearing, *see* 15 U.S.C. § 717r(b); *Colorado Interstate Gas,* 348 U.S. at 497-99, 75 S.Ct. at 470-71; *ASARCO,* 777 F.2d at 774-75, their argument before FERC that it erred in selecting the specific points along Transco's system where gathering ends and transmission began was sufficient to preserve the objection. While the Producers maintain that FERC erred in

finding that virtually all facilities located upstream from the central aggregation point are gathering and in failing to reconcile its conclusions with prior precedents, the orders demonstrate that FERC adequately considered a range of relevant factors—the facilities' length and diameter, the volume of gas transmitted, the pipelines' configuration, the location of compression facilities and processing plants, the source of pressure, and the presence of a central aggregation point. *North Padre/Central Texas Order,* 96 F.E.R.C. at 61,440-42; *North High Island/West Cameron Order,* 96 F.E.R.C. at 61,458- 60; *Central Louisiana Order,* 96 F.E.R.C. at 61,976-77. FERC did "not consider any one factor to be determinative," *North Padre/Central Texas Order,* 96 F.E.R.C. at 61,442, and its determinations were consistent with prior precedent. Although the Producers contend that FERC's decisions in *Seahawk Shoreline System,* 93 F.E.R.C. ¶ 61,097, 2000 WL 1610581 (2000), *reh'g denied, Seahawk Transmission Co.,* 95 F.E.R.C. ¶ 61,342, 2001 WL 744204 (2001), and *Venice Gathering Co.,* 97 F.E.R.C. ¶ 61,045, 2001 WL 1215940 (2001), are dispositive because the size of those pipelines was the same as the size of Transco's facilities, other relevant differences remain, including the systems' proximity to shore and their connections to other lines. Hence, "it is entirely appropriate for FERC to proceed on a case-by-case basis . . . ." *ExxonMobil,* 297 F.3d at 1087 (citing *SEC v. Chenery Corp.,* 332 U.S. 194, 202-03, 67 S.Ct. 1575, 1580-81, 91 L.Ed. 1995 (1947)). FERC gave reasoned consideration to each of the pertinent factors, and its factual conclusions are supported by substantial evidence in the record. *ExxonMobil,* 297 F.3d at 1084 (citations and quotations omitted).

Producers finally contend that even if the facilities are properly classified as gathering, the NGA required FERC to make a public interest finding before permitting Transco to abandon the facilities by sale to a nonjurisdictional affiliate. *See* 15 U.S.C. § 717f(b); *Transcon. Gas Pipe Line Corp. v.*

Fed. Power Comm'n, 488 F.2d 1325, 1328 (D.C.Cir.1973) (per curiam); *Michigan Consol. Gas Co. v. Fed. Power Comm'n*, 283 F.2d 204, 214 (D.C.Cir.1960). The Producers explain that the facilities in question were certificated as transmission, and the abandonment of certificated facilities is subject to FERC's public interest standard. In a public interest analysis, "the burden of proof is on the applicant for abandonment to show that the 'public convenience and necessity' permits abandonment, that is, that the public interest 'will in no way be disserved' by abandonment." *Transcon. Gas*, 488 F.2d at 1328 (quoting *Michigan Consol.*, 283 F.2d at 214). The Producers contend that FERC failed adequately to consider the anti-competitive effects of Transco's abandonment.

In FERC's view, "the issue of competition" is not "relevant to whether or not [FERC] will regulate an affiliated gatherer's rates or terms and conditions of service after it acquires abandoned facilities," because FERC "has no authority under the NGA to regulate a gatherer's rates or its terms and conditions of service." *North High Island/West Cameron Order*, 96 F.E.R.C. at 61,454 (citing *Conoco*, 90 F.3d 536). Put more simply, "NGA § 7(b) does not require [FERC] authorization for a transfer of gathering facilities." Respondent's Br. at 50. As the court has explained, "section 7(b) only applies to jurisdictional facilities, and 'do[es] not expand [FERC's] § 1(b) jurisdiction.'" *ExxonMobil*, 297 F.3d at 1088 (quoting *Conoco*, 90 F.3d at 553); accordingly, the petitioner in *ExxonMobil* could not use section 7(b) to "bootstrap" FERC jurisdiction over a set of gathering facilities that the petitioner sought to reclassify (but not to abandon). *Id.* Although the situation here is slightly different than in *ExxonMobil*, because Transco wishes to abandon its pipelines rather than simply reclassify them, FERC properly determined that under NGA section 7(b) it had no discretion to deny abandonment of Transco's facilities that it found were primarily functioning as gathering. *See, e.g., North*

Padre/Central Texas Order, 96 F.E.R.C. at 61,435. We part company with the Fifth Circuit's opinion in *Pacific Gas & Electric Co. v. FERC*, 106 F.3d 1190 (5th Cir.1997), to the extent it holds that FERC has discretion to examine whether abandonment would be in the public interest, *id.* at 1197, for once FERC determines that a facility is not dedicated to a jurisdictional function, it has no authority to exercise jurisdiction over that facility by denying the certificate of abandonment for that facility.

As to shippers' anti-competition concerns, FERC explained that even though it lacked the authority to deny the abandonment, the concerns were unfounded because the abandonment was "consistent with the unbundling policies of Order No. 636 and should, in the long run, promote competition within the gathering industry." *North High Island/West Cameron Order*, 96 F.E.R.C. at 61,454 (citing *Northern Natural Gas Co.*, 93 F.E.R.C. ¶ 61,101, at 61,273, 2000 WL 1610559 (2000)). FERC further noted that "the facilities at issue here are located on the OCS and will become subject to the [Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. §§ 1331-56 (2000),] upon approval of the spindown," thereby limiting any potential anticompetitive effects. *North Padre/Central Texas Order*, 96 F.E.R.C. at 61,435. Under FERC's OCSLA regulations, WGP is required to report the terms under which it provides service to shippers; a shipper can file a complaint if it believes either Transco or WGP has violated its statutory obligations and "the Commission will investigate any such complaint in a timely manner." *Id.* (citing 18 C.F.R. § 332.2, 332.206 (2000)). Thus, FERC has taken the long view, concluding that Order No. 636's unbundling policies create competitive conditions and that, combined with the standards of conduct for gathering facilities in Transco's tariff, the OCSLA sufficiently guards against the exercise of monopoly power. *See United Distrib. Cos.*, 88 F.3d at 1139.

Accordingly, because the court is "'generally unwilling to review line-drawing performed by [FERC] unless a petitioner can demonstrate that lines drawn . . . are patently unreasonable, having no relationship to the underlying regulatory problem,'" *ExxonMobil*, 297 F.3d at 1085 (quoting *Cassell v. FCC*, 154 F.3d 478, 485 (D.C.Cir. 1998)), and FERC's conclusions were reasonable, we deny the petitions for review.

APPENDIX B

FEDERAL ENERGY REGULATORY COMMISSION
Commission Opinions, Orders and Notices

Transcontinental Gas Pipe Line Corporation
Docket No. CP96-206-000

Williams Gas Processing—Gulf Coast Company, L.P.
Docket No. CP96-207-000

Order Dismissing Request for Declaratory Order and Application for Abandonment

Authorization

(Issued September 25, 1996)

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

On February 21, 1996, Transcontinental Gas Pipe Line Corporation (Transco) filed in Docket No. CP96-206-000, an application for an order authorizing the abandonment of certain facilities located primarily offshore and onshore in Texas, Louisiana and Mississippi, by sale at net book value to its corporate affiliate, Williams Gas Processing—Gulf Coast Company, L.P. (WGP). Concurrently, WGP filed a request for an order (Petition) declaring that all of the facilities that it will acquire from Transco are nonjurisdictional gathering facilities exempt from the Commission's Natural Gas Act (NGA) jurisdiction by reason of section 1(b) of the Act. For the reasons discussed below we will dismiss Transco's abandonment application and WGP's declaratory order request.

I. Transco's Abandonment Application— Docket No. CP96-206-000

Transco proposes to "spin-down" to WGP, an affiliate, all of its offshore Gulf Coast Facilities as well as various onshore facilities, most of which are located in Texas. WGP intends to acquire and operate the transferred facilities as a non-regulated, independent business. In support of its proposal, Transco states that its principal role is that of a transporter and that it no longer requires the subject facilities to provide gas sales. Transco has determined that the services performed through the subject facilities must not only be unbundled, but also freed of Commission regulation to be able to offer the flexibility which Transco claims that as a regulated transporter it cannot.

A result of the requested abandonment would be that certain receipt and delivery points, and associated services individually certificated under section 7(c) of the NGA, also must be abandoned and rate schedules removed from Transco's tariff. Additionally, receipt points on certain firm transportation services which have been converted from certificated to blanket services (some of which are not subject to pre-granted abandonment authorization) would also be affected. Accordingly, Transco requests abandonment to the extent such authorization is necessary to remove the points from the affected rate schedules and contracts and to terminate such services or the portion of such services affected by the Application. Additionally, Transco requests that four metering and regulating facilities located in onshore Mississippi, which historically have been classified as gathering facilities, be refunctionalized to transmission. Transco is also requesting authority to abandon certain certificated interconnect receipt points which are currently inactive and are not proposed to be utilized by WGP.

II. The Subject Facilities

A. Onshore Facilities

The Tilden/McMullen Facilities consist of 450.21 miles of 2-inch to 24- inch diameter pipeline which move gas from seventy-five receipt points. Some of the gas moving through the facilities is treated to remove H2S and C02 content at the Tilden Treating Plant. Most of the gas is thereafter available for processing at the Bee County Gas Processing Plant on the McMullen Lateral. Thereafter, the McMullen Lateral continues to move gas to two 2,500 hp compressor units located at Transco's Compressor Station 30 on Transco's mainline in Wharton County, Texas.

The King Ranch Plant Facilities consist of 183.83 miles of 4-inch to 24-inch diameter pipeline which move gas from fifteen receipt points in a northeasterly direction to the vicinity of the King Ranch Processing Plant, owned and operated by Exxon Company USA, where the facilities interconnect with Transco's mainline transmission facilities or other pipelines in Kleeberg County, Texas. (WGP states that upon construction by WGP of a planned interconnect, gas moving through the facilities will be processed at the King Ranch plant.)

B. Offshore Facilities

Transco's contiguous offshore facilities include over 2,000 miles of pipeline, all of which are located in water depths less than 200 meters.

The North Padre Island Facilities consist of 93.36 miles of 10-inch to 24- inch pipeline which move gas from twelve receipt points offshore Texas in a northwesterly direction to the Padre Island separation and dehydration plant and thereafter continuing to Transco's 24-inch transmission line in Jim Wells County. The North Padre Facilities have a maximum capacity of 189,000 Mcf/day (Mcf/d).

The Central Texas Facilities consist of 434.68 miles of 6-inch to 36-inch pipeline which move gas and associated liquids from 76 receipt points onshore and offshore Texas in a northwesterly direction to the Markham separation and dehydration plant, thereafter continuing to Transco's onshore Compressor Station 30. The Central Texas Facilities have a maximum capacity of 1.1 Bcf/day (Bcf/d).

The North High Island/West Cameron Facilities consist of 251.18 miles of 2- inch to 30-inch pipeline. Some of these pipelines move gas from offshore Texas and Louisiana, in a northerly direction to a 11,490 hp compression facility at Station 44, and a separation and dehydration plant (Johnson's Bayou Plant), in Cameron Parish, Louisiana. Other parts of the facilities move gas in a northwesterly direction, commencing in offshore Louisiana up to the Cameron Meadows plant and thereafter to the Johnson's Bayou Plant for compression. The North High Island Facilities move gas from thirty-four receipt points and have a maximum capacity of 350,000 Mcf/d.

The Central Louisiana Facilities consist of 408.07 miles of 2-inch to 24-inch pipeline which move gas from one hundred and eighteen receipt points offshore Louisiana to the onshore Enron Cow Island Processing Plant, and thereafter to Egan Junction at milepost 23.62 in Acadia Parish, Louisiana. The Central Louisiana Facilities have a maximum capacity of 943,000 Mcf/d.

The Southeast Louisiana Facilities consist of 841.53 miles of 2-inch to 30-inch pipeline which move gas from 110 receipt points offshore Louisiana, in a northerly direction up to the Bayou Black Separation Plant and thereafter to the Terrebonne Processing Plant and the inlet of Transco's Station 62 in Terrebonne Parish, Louisiana. The Southeast Louisiana Facilities have a maximum capacity of over 1.5 Bcf/d.

C. Miscellaneous Onshore and Offshore Facilities

Transco also seeks to abandon: (1) thirty- seven non-contiguous segments of offshore pipe that tie-in to third-party offshore facilities; (2) 13 contiguous onshore facilities consisting of lateral lines, or groups of lateral lines, that move gas from one to eleven receipt points to either a Transco mainline or a Transco lateral trunk in Texas, Louisiana, or Mississippi, and (3) fifteen segments of non-contiguous onshore facilities that tie-in to third-party facilities in Mississippi, Louisiana, Oklahoma, New Mexico, and Texas.

Additionally Transco's application includes a number of platforms and/or dehydration units at certain locations throughout the facilities. The remaining facilities for which Transco seeks abandonment are facilities such as valves and meters that are appurtenant to the seven area specific facilities.

III. WGP's Petition—Docket No. CP96-207-000

WGP explains that the philosophy behind its plans to acquire and operate the subject facilities as non-jurisdictional gathering facilities was the determination of The Williams Companies, the parent of Transco and WGP, that Transco's "gathering" facilities should be "spun-down" and operated independently of Transco's interstate pipeline facilities. WGP contends that its acquisition and ownership of the subject facilities on a non-jurisdictional basis would be consistent with the Commission's orders clarifying the scope of its gathering jurisdiction, and is required by the section 1(b) gathering exemption of the NGA. WGP also argues that because the subject facilities are largely comprised of offshore facilities, the proposed transfer is consistent with the Commission's goals to foster development of natural gas production in the Outer Continental Shelf (OCS). WGP further asserts that in order to promote a fair competitive environment without artificial impediments to the develop-

ment of offshore reserves, the Commission should apply the "primary function" test to offshore facilities with the flexibility required by *EP Operating Co. v. FERC*,[1] and *Amerada Hess Corp.*,[2] in a manner which adequately reflects the function of the facilities and does not focus on ownership rather than form.

WGP also explains that for several of the subject facilities the proposed demarcation between gathering and transmission extends beyond processing plants or separation and dehydration facilities in order to reach areas where there are "transmission pipelines in addition to Transco". WGP contends that the inclusion of such beyond-the-plant facilities creates "stand alone .logical gathering systems' "that perform all services necessary to deliver gas to as many transmission systems as is feasible.

Specifically addressing the onshore facilities, WGP contends that their lengths and diameters support a finding of gathering because the pipelines range in size from 2-inches to 24-inches in diameter, most of the lines are smaller than 12-inches in diameter, and the larger diameter segments are required to move larger volumes to processing plants. WGP claims that the other elements of the "primary function" test also indicate a gathering function. WGP avers that: (1) The Tilden/McMullen and King Ranch facilities are located primarily behind processing plants and are primarily "network-like" on the upstream ends with larger spines further downstream; (2) The 103 mile portion of the Tilden/McMullen facilities extending beyond the processing plant is necessary because it is connected to 25 receipt points, the final stage of field compression is located at its terminus, and it creates a "logical gathering system"; (3) Of the onshore facilities, only the Tilden/McMullen facilities include

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[1] 876 F.2d. 46 (5th Cir. 1989).

[2] 52 FERC P 61,268 (1990).

compression—2400 hp to move gas through the treatment plant and 5,000 hp at the terminus to boost gas into Transco's transmission system; (4) Wells "are generally dispersed" throughout the Tilden/McMullen and King Ranch facilities; and (5) the Tilden/McMullen facilities operate at wellhead pressures ranging between 600 and 750 psi and the King Ranch facility operates at pressures between 700 and 850 psi.

Respecting the non-contiguous onshore facilities WGP states that they are directly connected to wells and are "small gathering lines".

Respecting the offshore facilities, WGP generally argues that they are gathering facilities because they are comprised of numerous segments of pipeline used to move gas from production platforms to processing and transmission systems onshore. WGP maintains that diameters of the offshore facilities, generally between 2-inches to 30-inches, are consistent with gathering facilities. Specifically addressing the 36-inch diameter of some of the looped pipelines comprising the "spine" of the Central Texas facilities, WGP argues that diameter, alone, should not preclude a finding of gathering on the OCS where there are operational needs for larger diameter pipeline. WGP also asserts that the total pipeline mileage of the offshore facilities is due to the various "smaller" segments required to connect to production and to move production to onshore processing and transmission consistent with other offshore gathering systems. WGP further contends that prior to Sea Robin Gas Pipeline Co. (Sea Robin),[3] the overall size of a system has never been a determining factor and, in any event, there are significant differences between its offshore facilities and those in Sea Robin.

WGP also maintains that the geographic configuration of the offshore facilities is consistent with a gathering function because they are generally arranged in a "network-like"

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[3] 71 FERC P 61,351 (1995), *reh'g denied* 75 FERC P 61,332 (1996).

pattern and many of the facilities are arranged in the shape of an inverted "Y". WGP also states that there are 289 receipt points connected to its offshore facilities and that the "wells are often dispersed throughout" the facilities except where there is a length of pipeline necessary to deliver gas from offshore wells to onshore processing or transmission lines.

WGP also contends that the location of compressors and processing plants confirms the offshore facilities' gathering function and expresses its disagreement with the Commission's statements in Sea Robin that the location of processing facilities is of little relevance in determining the primary function of offshore pipeline facilities. WGP states that all of the offshore facilities are located behind processing plants, except for three beyond-the-plant extensions (North Padre Island facilities—4 miles, Central Texas facilities—24 miles, Central Louisiana facilities—26 miles). WGP maintains that these beyond-the-plant facilities are merely relatively short extensions incidental to processing which create "logical gathering systems" and which also in the case of the Central Texas and Central Louisiana facilities connect to additional production.

WGP further claims that the amount of compression on the offshore facilities is also consistent with gathering. WGP states that except for the North High Island/West Cameron facilities, which includes a 11,490 hp final stage compressor station, there is no compression on the offshore facilities except for minor "production-related" platform compression or separation related "flash gas" compression. WGP further states that the operating pressures of its offshore facilities "are for the most part related to the pressures at which the gas is produced" and range 675—1300 psi.

IV. Notice and Interventions

Following due notice by publication in the Federal Register (61 Fed. Reg. 8607, March 5, 1996) the 118 parties listed in

appendix A filed timely motions to intervene in Docket No. CP96-206-000 and the 89 parties listed in appendix B filed timely motions to intervene in Docket No.CP 96-207-000.[4] In addition, the 13 persons listed in appendix C filed motions to intervene out of time in Docket No. CP96-206-000 and the 16 persons listed in appendix D filed motions to intervene out of time in Docket No. CP96-207-000. For good cause shown and because it will not delay these proceedings or prejudice any party to it, we will grant these motions.

The 23 parties listed in appendix C filed protests to or comments on Transco's Application and WGP's Petition. Among the issues/ concerns raised are: (1) the consistency of the proposed "spin-down" with the proper application of the "primary function" test and the Commission's recent Statement of policy respecting pipeline facilities on the OCS;[5] (2) the impact of the proposed "spin-down" on Transco's transportation rates; (3) the possibility of "rate stacking"; (4) the potential impact of unregulated "gathering" rates; (5) the consistency of WGP's Petition and Sea Robin; (6) alleged contradictions between assertions made by Transco in this proceeding and other Transco proceedings respecting the function of the subject facilities; and (7) the impact of the proposed "spin-down" on the Commission's goals of promoting open access and competition.

In addition, several parties requested a technical conference or hearing and the Producer Coalition filed a motion to sever and dismiss as to Transco's offshore facilities. Subsequently,

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[4] Timely, unopposed motions to intervene are granted pursuant to rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (1994).

[5] Gas Pipeline Facilities and Services on the Outer Continental Shelf=Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act (Policy Statement), 74 FERC P 61,222 (Feb. 28, 1996).

Transco and WGP filed answers to the protests and motions. Several parties filed replies to these answers.[6]

V. Discussion

In their pleadings in this case Transco and WGP are asking the Commission to rescind the exercise of NGA jurisdiction over extensive offshore and onshore transmission facilities that have been regulated for twenty or more years, on which regulation producers and other shippers have relied in making long-term business decisions and commitments of capital. Moreover, a decision to grant the requested abandonment in this case could set a precedent for ending NGA jurisdiction on the OCS, as it is likely that virtually every similar interstate pipeline on the OCS then would file a similar application. It is within this context that Transco's Application and WGP's Petition must be assessed.

The proposal before the Commission in this proceeding represents a very significant effort by a major interstate pipeline to sever its integrated pipeline facilities into two large parts, one jurisdictional and the other nonjurisdictional. Under the proposal, Transco would retain and operate the main trunk of the system that runs from Texas to New York. All branch pipeline facilities that feed the trunk, including i) facilities physically and operationally integrated with Transco, ii) facilities physically separated from Transco's system, and iii) the entirety of Transco's OCS pipeline facilities, would be transferred to WGP, which would operate them as an unregulated "gathering" company. The potential impact of the proposal is heightened by the fact that

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[6] Because they will provide for a more complete record in this proceeding, we will waive rule 213 of the Commission's rules of practice and procedure and allow the answers, replies, and other supplemental pleadings that have been filed in these proceedings.

Transco owns and operates more miles of interstate pipeline on the OCS than any other interstate pipeline or producer.[7]

If the proposal were approved in its entirety, all gas volumes connected to the Transco system in the Gulf of Mexico and nearby onshore areas would be forced to pass through facilities owned and operated by a nonjurisdictional affiliate before the gas could gain access to Transco's jurisdictional facilities. In addition, Transco proposes to transfer to WGP certain pipeline segments that extend downstream from processing plants so that gas previously tendered to Transco at such plants will be required to pass through the unregulated WGP facilities before it reaches Transco.

The combination of large onshore and extensive offshore facilities included in Transco's Application is without precedent in prior "spin-down" cases.[8] Transco has consolidated in one application pipeline comprising the entirety of its offshore facilities, as well as essentially all of its onshore pipeline facilities in its production area zones other than

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[7] Transco owns 11.7% of all such pipeline in the Gulf of Mexico federal waters. Gulf of Mexico Natural Gas Resources and Pipeline Infrastructures, Foster Associates (1996), p. 27.

[8] The Commission has in at least one case been requested to address the jurisdictional status of an offshore system which included some onshore facilities. However, unlike the facilities included in Transco's proposal, this system was a relatively small, geographically discrete system. *See* Superior Offshore Pipeline Co., 67 FERC P 61,253 (1994) [Facilities made up of 118 miles of 12-inch to 24-inch. pipeline determined to be gathering]. Moreover, even when viewed in isolation from the onshore component, the collection of offshore facilities included in Transco's application is unprecedented. Transco's offshore facilities include over 2,000 miles of pipeline. Prior to the instant proceeding, the largest collection of OCS facilities the Commission has been asked to consider was Sea Robin's 438 miles of pipeline which the Commission determined to be jurisdictional transmission facilities. *See Sea Robin, supra.*

certain mainline facilities. The physical parameters of the subject facilities are massive and complex, involving over 3,100 miles of pipeline in multiple segments located onshore in five states, in the OCS and in state waters. Although some of the subject facilities, or isolated segments, may qualify as gathering facilities under the "primary function" test, based upon the record in these proceedings as it stands, we cannot declare, as WGP has requested, that all of the facilities are gathering facilities.

In our view, WGP has not demonstrated that the facilities meet the physical criteria of the "primary function' test, at least because the facilities include substantial segments of large diameter pipeline that move gas over relatively long distances.[9] Moreover, some of these segments are looped with large capacity pipeline.[10] It also appears that some of the facilities span significant distances without picking up

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[9] It is clear that the scope of Transco's proposal goes far beyond any previous request for reclassification of facilities from transmission to gathering. The facilities include more than 1,360 miles of pipeline with diameters of 20 inches or greater. Over 70% of the 435 miles of pipe comprising Transco's Central Texas Facilities have diameters of 20 inches or greater and almost 50% of the pipe is 24-inches in diameter or greater. In addition, the facilities include 121.64 miles of 30-inch and 55.69 miles of 36-inch line. Over 50% of the 841 miles of pipe comprising Transco's Southeast Louisiana Facilities have diameters of 20-inches or greater, including 71.92 miles of 30- inch diameter line. Over 50% of the pipe comprising the Central Louisiana is 16-inches in diameter or greater. Over 95% of the 93 miles of pipe comprising the North Padre Island Facilities is 20-inches in diameter or greater.

[10] Transco's Central Texas Facilities include the following segments of looped line: approximately 40 miles of 30 and 20-inch looped line; approximately 56 miles of 30-inch and 36-inch looped line; and approximately 24 miles of 14-inch and 36-inch looped line which extends beyond the Markham plant. The Southeast Louisiana Facilities include approximately 31 miles of looped 20-inch and 24-inch line. The North High Island Facilities include more than 45 miles of the 24 inch line looped with 10-inch and 16-inch diameter line.

significant, if any, volumes of gas.[11] In addition, some of the facilities extend beyond processing plants.[12] Especially in light of the limitations on gathering pipeline size, as well as the other considerations discussed in the Commission's decision in *Sea Robin*,[13] the Commission believes that WGP has not adequately explained how such existing interstate pipeline facilities that are not located in deep OCS waters, i.e., waters in excess of 200 meters, can properly be reclassified as gathering lines under the "primary function" test. At the very minimum, large portions of the facilities are clearly properly classified as jurisdictional transmission facilities.

Finally, we note that the Commission's recent Policy Statement respecting pipeline facilities on the OCS recognized the existence of an existing interstate pipeline infrastructure in shallow OCS waters.[14] It is a historical fact that starting in the 1960's most major interstate pipelines in the Gulf Coast region extended their facilities onto the OCS in the Gulf of Mexico to connect and transmit gas supply to their customers in markets located throughout the eastern half of the United States. These systems constituted major additions to the existing interstate pipeline network, were dominated by facilities 16 to 36 inches in diameter, and were designed and operated to carry gas from OCS locations throughout the interstate pipeline grid. These systems were

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[11] While neither Transco nor WGP included maps clearly showing the precise location of wells connected to the facilities, the main trunk of the North Padre Island facilities is a 70 mile-long 24-inch diameter line that has no apparent well connections along its length, and extends over 4 miles beyond the North Padre Island processing plant.

[12] For example, the Tilden/McMullen facilities include an approximately 152 mile-long, 24-inch diameter line which extends approximately 103 miles beyond the Bee County processing plant. Throughout these 103 miles, it appears that the line picks up gas at only three points.

[13] *Supra.*

[14] Policy Statement, *supra* at pp. 61,757-759.

built and operated by companies principally engaged in the business of purchasing, transporting, and reselling gas in interstate commerce, and were presented to and certificated by the Commission as interstate transportation facilities. Respecting the jurisdictional status of existing interstate pipelines, such as Transco, the Policy Statement stated that "[e]xisting interstate pipelines and gathering facilities would retain their status barring some change in circumstances." [15]

In view of the considerations discussed above, we cannot conclude that the pleadings of Transco and WGP have clearly demonstrated it would be in the public convenience and necessity to grant Transco's application for abandonment or that there is sufficient cause for the Commission to find that the jurisdictional status of all of the facilities to be transferred to WGP should be changed from transmission to gathering. Neither Transco nor WGP included in their pleadings an alternative request that the Commission find specific parts of the facilities to be declared nonjurisdictional. Accordingly, Transco's application and WGP's petition are dismissed. The dismissal is without prejudice, however, to Transco's and WGP's filing another proposal requesting that the Commission consider discrete portions of the facilities which were the subject of instant proceedings to be gathering, upon which all interested persons will have the opportunity to comment.

The Commission orders:

(A) The application for abandonment authorization filed by Transco in Docket No. CP96-206-000 is dismissed.

(B) The petition for a declaratory order filed by WGP in Docket No. CP96-207-000 is dismissed.

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[15] Policy Statement, *supra* at p. 61,757.

Appendix A

Intervenors—Docket No. CP96-206-000

Amerada Hess Corporation

Amoco Production Company

Anadarko Petroleum Corporation

ANR Pipeline Company

Aquila Energy Marketing Corporation

Ashland Exploration, Inc.

Atlanta Gas Light Company

Baltimore Gas and Electric Company

Blue Dolphin Exploration Company

Brooklyn Union Gas Company

Chevron U.S.A., Inc.

CNG Energy Services Corporation

CNG Producing Company

CNG Transmission Corporation

Coastal Eagle Point Oil Company

Columbia Gas Transmission Corporation

Commonweatlh Gas Services Inc.

Conoco Inc.

Consolidated Edison Company of New York, Inc.

Delhi Gas Pipeline Corporation

East Ohio Gas Company

Enron Capital and Trade Resources Corporation

Enron Louisiana Energy Company

Exxon Corporation

Fina Natural Gas Company

Florida Gas Transmission Company

Gasdel Pipeline System, Inc.

GPM Gas Corporation

Frederick W. Peters, Esq.

High Island Offshore System

Independent Petroleum Association of America

John H. Young, Inc.

Koch Gateway Pipeline Company

Leviathan Gas Pipeline Company

Liquid Energy Corporation

Long Island Lighting Company

Louisiana Land and Exploration Company

Market Hub Partners, Inc.

Mobil Natural Gas Inc.

Municipal Gas Authority of Georgia

National Fuel Gas Distribution Corporation

Natural Gas Clearinghouse

Natural Gas Pipeline Company of America

New Jersey Natural Gas Company

New York Public Service Commission

Newfield Exploration Company

Niagara Mohawk Power Corporation

Noram Gas Transmission Company

North Carolina Natural Gas Corporation

Northeast Energy Associates

Northern Natural Gas Company

NUI Corporation

Owens-Corning Fiberglass Corporation

Oxy USA Inc.

PanEnergy Field Services, Inc.

PanEnergy Trading & Marketing Services, LLC

PECO Energy Company

Penn Fuel Gas, Inc.

Pennzoil Exploration & Production Co.

PG Energy Inc.

Philadelphia Gas Works

Phillips Petroleum Company

Piedmont Natural Gas Company, Inc.

Pogo Producing Company

Process Gas Consumers Group

Producer-Marketer Transportation Group

Public Service Company of North Carolina

Public Service Electric and Gas Company

City of Richmond

Rochester Gas & Electric Corporation

Sea Robin Pipeline Company

Seagull Marketing Services, Inc.

Shell Offshore, Inc.

South Carolina Pipeline Corporation

South Jersey Gas Company

Southern Company Services, Inc.

Southern Natural Gas Company

Star Enterprise

Sun Company, Inc.

Superior Natural Gas Corporation

Tenneco Energy Inc.

Texaco Natural Gas Inc.

Texas Eastern Transmission Corporation

Total Minatome Corporation

TPC Corporation

Transco Municipal Group

Transcontinental Gas Pipe Line Corporation

Trunkline Gas Company

U-T Offshore System

UGI Utilities, Inc.

UMC Petroleum Corporation

Union Oil Company of California

Union Pacific Fuels, Inc.

Valero Gas Marketing, L.P.

Valero Transmission, L.P.

Vastar Gas Marketing, Inc.

Virginia Natural Gas, Inc.

Washington Gas Light Company

Appendix B

Intervenors—Docket No. CP96-207-000

Amerada Hess Corporation

Amoco Production Company

Anadarko Petroleum Corporation

ANR Pipeline Company

Aquila Energy Marketing Corporation

Ashland Exploration, Inc.

Atlanta Gas Light Company

Baltimore Gas and Electric Company

Blue Dolphin Exploration Company

Blue Dolphin Pipeline Company

Brooklyn Union Gas Company

Chevron U.S.A., Inc.

CNG Energy Services Corporation

CNG Producing Company

CNG Transmission Corporation

Coastal Eagle Point Oil Company

Columbia Gas Transmission Corporation

Commonweatlh Gas Services Inc.

Conoco Inc.

Consolidated Edison Company of New York, Inc.

Delhi Gas Pipeline Corporation

East Ohio Gas Company

Enron Capital and Trade Resources Corporation

Enron Louisiana Energy Company

Exxon Corporation

Fina Natural Gas Company

Florida Gas Transmission Company

Gasdel Pipeline System, Inc.

GPM Gas Corporation

High Island Offshore System

Independent Petroleum Association of America

John H. Young, Inc.

Koch Gateway Pipeline Company

Liquid Energy Corporation

Louisiana Land and Exploration Company

Market Hub Partners, Inc.

Mobil Natural Gas Inc.

Municipal Gas Authority of Georgia

National Fuel Gas Distribution Corporation

Natural Gas Clearinghouse

Natural Gas Pipeline Company of America

New Jersey Natural Gas Company

New York Public Service Commission

Newfield Exploration Company

Niagara Mohawk Power Corporation

Noram Gas Transmission Company

North American Resources Company

North Carolina Natural Gas Corporation

Northeast Energy Associates

Northern Natural Gas Company

NUI Corporation

Owens-Corning Fiberglass Corporation

Oxy USA Inc.

PanEnergy Field Services, Inc.

PanEnergy Trading & Marketing Services, LLC

Pennzoil Exploration & Production Co.

Philadelphia Gas Works

Phillips Petroleum Company

Piedmont Natural Gas Company, Inc.

Pogo Producing Company

Producer-Marketer Transportation Group

Public Service Company of North Carolina

Public Service Electric and Gas Company

City of Richmond

Sea Robin Pipeline Company

Seagull Marketing Services, Inc.

Shell Offshore, Inc.

South Carolina Pipeline Corporation

South Jersey Gas Company

Southern Natural Gas Company

Star Enterprise

Sun Company, Inc.

Superior Natural Gas Corporation

Teleco Oilfield Services Inc.

Tenneco Energy Inc.

Texaco Natural Gas Inc.

Texas Eastern Transmission Corporation

Total Minatome Corporation

TPC Corporation

Transco Municipal Group

Trunkline Gas Company

U-T Offshore System

UMC Petroleum Corporation

Union Oil Company of California

Union Pacific Fuels, Inc.

Valero Gas Marketing, L.P.

Valero Transmission, L.P.

Vastar Resources, Inc.

Virginia Natural Gas, Inc.

Appendix C

Late Intervenors—Docket No. CP96-206-000

ANR Pipeline Company

Aquila Energy Marketing Corporation

Commonwealth Gas Services Inc.

Fina Natural Gas Company

Leviathan Gas Pipeline Company

Louisiana Land and Exploration Company

Newfield Exploration Company

Producer Coalition

Pogo Producing Company

Process Gas Consumers Group

South Jersey Gas Company

Total Minatome Corporation

UMC Petroleum Corporation

Appendix D

Late Intervenors—Docket No. CP96-207-000

ANR Pipeline Company

Aquila Energy Marketing Corporation

Commonwealth Gas Services Inc.

Delhi Gas Pipeline Corporation

Fina Natural Gas Company

Leviathan Gas Pipeline Company

Louisiana Land and Exploration Company

Newfield Exploration Company

North American Resources Company

Philadelphia Gas Works

Pogo Producing Company

Process Gas Consumers Group

Producer Coalition

South Jersey Gas Company

Total Minatome Corporation

UMC Petroleum Corporation

APPENDIX C

FEDERAL ENERGY REGULATORY COMMISSION
Commission Opinions, Orders and Notices

Docket No. CP96-206-001
Docket No. CP96-207-001

Transcontinental Gas Pipe Line Corporation
Williams Gas Processing—Gulf Coast Company, L.P.

ORDER DENYING REHEARING
(Issued June 14, 2001)

Before Commissioners: Curt Hébert, Jr., Chairman; William L. Massey, and Linda Breathitt.

On September 25, 1996, the Commission issued an order addressing a request by Transcontinental Gas Pipe Line Corporation (Transco), in Docket No. CP96-206-000, for permission and approval to abandon a massive and complex collection of facilities, pursuant to section 7(b) of the Natural Gas Act (NGA),[1] and a request by Williams Gas Processing—Gulf Coast Company, L.P. (Williams), in Docket No. CP96-207-000, for a Commission finding that these facilities would, following transfer to Williams, be gathering facilities exempt from the Commission's NGA jurisdiction under NGA section 1(b). The Commission dismissed both applications because Transco and Williams did not include in their pleadings any basis upon which the Commission could reach either the requested finding that all of the facilities were gathering, or alternatively, a finding that particular portions of

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[1] 76 FERC ¶ 61,317 (1996).

the facilities were gathering. Transco and Williams jointly request rehearing of the September 1996 order, contending the Commission erred in not finding that gathering is the primary function of all of the facilities at issue.

We will deny the parties' request for rehearing, for the reasons discussed below.

Background

In Docket No. CP96-206-000, Transco sought authorize-ation to abandon all of its facilities located offshore in the Gulf of Mexico and to abandon certain onshore facilities located primarily along the Texas coast. Transco proposed to "spin down" these certificated facilities and associated services by transfer to its affiliate Williams.

Williams filed a petition, in Docket No. CP96-207-000, requesting that the Commission declare that the facilities Transco proposed to abandon by transfer would be gathering facilities following Williams' acquisition and thereby be exempt from the Commission's NGA jurisdiction.

The facilities at issue are massive and complex, encompassing approximately 3,200 miles of 2- to 36-inch pipe located onshore in five states and offshore in state and federal waters, compressor stations, and gas treatment plants. The facilities are described in detail in Transco's application, Williams' petition, and in the September 1996 order.

In order to determine whether a facility performs primarily jurisdictional transmission or nonjurisdictional gathering, the Commission considers various physical and geographic characteristics of the facility.[2] In the September 1996 order,

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[2] In Farmland Industries, Inc., (Farmland), 23 FERC ¶ 61,063 (1983), the Commission enumerated several physical and geographic factors to be considered in determining the primary function of a facility, including: (1) the length and diameter of the facility, (2) the extension of the facility beyond the central point in the field, (3) the facility's geographic

the Commission observed that "[a]lthough some of the subject facilities, or isolated segments, may qualify as gathering facilities under the 'primary function' test," the facilities contained "substantial segments of large diameter pipeline that move gas over relatively long distances," i.e., facilities which clearly serve to transport gas in interstate commerce. Therefore, the Commission could not find, as requested, that all of the facilities qualified as gathering.

Neither Transco nor Williams included in their pleadings an alternative request to permit the Commission to reach a finding that anything less than every one of the facilities presented was gathering. Consequently, upon finding that portions of Transco's facilities were transporting gas in interstate commerce, the Commission dismissed the parties' request to find that all of the facilities were gathering. The Commission did so without prejudice, observing that Transco and Williams retained the option of filing another proposal requesting the Commission consider whether discrete portions of the facilities may be engaged primarily in gathering.[3]

Transco's and Williams' Joint Request for Rehearing

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configuration, (4) the location of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) operating pressures. In additional to these physical and geographic criteria, the Commission also considers the purpose, location, and operation of the facility, the general business activity of the owner of the facility, and whether the jurisdictional determination is consistent with the objectives of the NGA and Natural Gas Policy Act.

[3] The parties have done so in separate proceedings in Docket Nos. CP01- 32-000 and CP01-33-000, in Docket Nos. CP01-102- 000 and CP01-103-000, and in Docket Nos. CP01-368 and CP01-369- 000, proceedings in which Transco seeks abandonment approval and Williams requests a declaration of nonjurisdictional status for fractions of the whole of the facilities at issue here. However, in their request for rehearing in the instant docket, the parties do not seek to parse the Transco facilities; rather, they continue to insist that the Commission should find all the facilities at issue to be gathering.

Transco and Williams request rehearing on the grounds that the Commission did not properly apply its primary function test to Transco's facilities, placed undue reliance on policy considerations in reaching its conclusion, failed to follow its 1996 Policy Statement concerning the primary function of facilities located offshore,[4] and failed to recognize that its policy aims could be realized absent NGA oversight by exercising its authority under the Outer Continental Shelf Lands Act (OCSLA).[5]

In assessing the primary function of Transco's facilities, Transco and Williams claim that the Commission failed to properly apply the "sliding scale which will allow the use of gathering pipelines of increasing length and diameters," described in Amerada Hess Corporation (Amerada Hess),[6] to Transco's offshore facilities. In addition, the parties contend that the Commission "decided to ignore the behind-the-plant factor because, for policy reasons, it does not like the result it would dictate." [7] The parties believe this constitutes disparate treatment in the application of the primary function test to Transco's offshore facilities and other onshore systems. The parties argue the Commission should treat the OCS as a producing area, and recognize that large offshore facilities function similarly to smaller onshore facilities located in an onshore producing field. They assert that the Commission has applied its primary function test inconsistently by finding smaller "piecemeal systems" to be gathering, while refusing to do the same for Transco's larger integrated facilities.

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[4] Gas Pipeline Facilities and Services on the Outer Continental Shelf—Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act, 74 FERC ¶ 61,222 (Feb. 28, 1996), *reh'g dismissed*, 75 FERC ¶ 61,219 (1996).

[5] 43 UCS §§ 1301-1356.

[6] 52 FERC ¶ 61,268 at 61,988 (1990).

[7] Transco's and Williams' Request for Rehearing, at 27 (October 25, 1996).

Transco and Williams assert that to assess the primary function of a facility, the Commission should properly concern itself with that facility's physical features. They charge that in this case the Commission improperly placed undue emphasis on non-physical features, such as the facilities' historic jurisdictional classification, Transco's shippers' reliance on the protections provided by NGA regulation, and the potential to open a regulatory gap absent NGA jurisdiction and thereby permit affiliate abuse and/or the exercise of market power.

Transco and Williams argue that the historic designation and certification of facilities should not be taken as evidence of facilities' function, a position the parties assert the Commission has previously endorsed.[8]

In the September 1996 decision, the Commission noted the facilities in question had been constructed by companies principally engaged in the business of purchasing, transporting, and reselling gas in interstate commerce and were operated by Transco, a company engaged principally in the transportation of gas in interstate commerce. Transco and

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[8] Transco and Williams quote El Paso Natural Gas Company, 72 FERC ¶ 61,219 at 62,002 (1995), in which the Commission observed that:

> Under [a] bundled sales regulatory environment, the gathering/transmission function distinction was not as important as it is in a post-Order No. 636 environment. Therefore, traditionally, when a pipeline applied for a certificate to construct facilities, the Commission did not inquire into the pipeline's prospective use of the facilities before issuing the certificate. Consequently, many facilities that actually perform a gathering function originally were constructed under NGA section 7 certificates. [Footnote omitted.] Similarly, in past rate proceedings, the Commission also did not apply the primary function test prior to determining how a pipeline would functionalize the facilities in its tariff for rate treatment purposes. Therefore, until the Commission actually scrutinizes the facilities under the primary function test, the actual jurisdictional status of the facilities cannot be definitively determined.

Williams object to this focus on the business purpose of the present owner of the facilities, i.e., Transco, contending that in other abandonment cases the Commission has looked to the business purpose of the prospective owner of the facilities to be abandoned, i.e., Williams.[9]

Transco and Williams believe the Commission erred by taking market power and competitive considerations into account in assessing the primary function of Transco's facilities. For example, the parties maintain that the fact that following abandonment Williams, Transco's NGA-exempt affiliate, will control access to Transco's mainlines should be immaterial to the Commission's contemplation of Transco's facilities' primary function. The parties insist any concerns regarding affiliate abuse or market power can be addressed separately following transfer. They observe that the Commission has rejected such concerns as criteria for determining whether specific facilities are performing primarily transportation or gathering.[10] The parties add that such concerns have no relevance offshore, since even absent NGA oversight, the OCSLA stands ready to ensure open and nondiscriminatory access.

Transco and Williams claim that unbundling in the wake of Order No. 636 has led to facilities formerly used to provide bundled sales service being reclassified as gathering and that Transco, by seeking to abandon facilities no longer used to provide jurisdictional services, is acting in conformity with the Commission's directed restructuring. Thus, they argue it "defies reason" for the Commission to expect a pipeline

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[9] Citing Williams Natural Gas Company, 68 FERC ¶ 61,100 at 61,558 (1994) and Arkla Gathering Services Company, 67 FERC ¶ 61,257 at 61,867 (1994).

[10] Citing El Paso Natural Gas Company, 72 FERC ¶ 61,220 at 62,013-14 (1995) and Mid Louisiana Gas Company, 67 FERC ¶ 61,255 at 61,850-51 (1994).

company to abandon facilities no longer used for certificated service at the same time that the Commission resists approving such abandonment because of shippers' reliance on NGA oversight of the now-nonjurisdictional service that the pipeline provides. The parties believe such an approach thwarts the pro-competitive unbundling that Order No. 636 sought to bring about.

Transco and Williams stress that the Commission, when presented with a question of jurisdiction, can and should reach resolution by straightforward reference to the specific facts at hand, and should not, as it did in its September 1996 order, permit its consideration of the facts to be colored by reflections upon the potential precedential impacts of its decision. The parties allege that in this case, the Commission "identified the conclusion it wanted to reach, for policy reasons alone" prior to entering into its primary function analysis. They believe that the Commission's decision was motivated by "the overriding objective of its new [1996 Policy Statement], i.e., entrenching the status quo for existing OCS facilities." [11]

Transco and Williams describe the September 1996 order as "unprecedented, arbitrary and erroneous" for applying the Commission's primary function test, as modified to apply offshore, to Transco's onshore facilities.

Transco and Williams imply that were the Commission to forego "piecemeal NGA regulation" over offshore facilities—e.g., by declaring all offshore facilities to be gathering—and instead rely exclusively on its jurisdiction under the OCSLA, this would provide for a more comprehensive and uniform regulatory regime, and thereby promote the orderly and rational development of offshore resources.

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[11] Transco's and Williams' Request for Rehearing, at 3-4 (Oct. 25, 1996).

Commission Response

Transco and Williams are correct that the Commission did not undertake an exacting application of every one of the Farmland factors to every one of the multiple facilities that Transco seeks to abandon. We determined, however, that there was no need to so exhaustively examine the facilities at issue. As explained in the September 1996 order, Transco sought abandonment approval on an all-or-nothing basis. Thus, upon the Commission's finding a portion of Transco's approximately 3,200 miles of 2- to 36-inch pipeline system to be primarily transporting gas in interstate commerce, we logically had to and did dismiss the parties' request for abandonment authorization, since they had made it contingent on the Commission's also finding that each and every one of facilities can qualify as gathering.

In our September 1996 order, we dismissed the parties' requests without prejudice, observing that although certain of Transco's pipelines were clearly transmission, this was not necessarily the case for all. Accordingly, we invited the parties to review Transco's extensive set of facilities with an aim to distinguishing sections or segments that might be performing primarily gathering, and then return with a refined abandonment application limited to this subset of gathering lines.[12]

Transco and Williams contend we did not properly apply the Farmland factors; in particular, that we did not apply the primary function test as modified in Amerada Hess for facilities located offshore.[13] The parties point out, properly,

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[12] *See* note 3.

[13] As a corollary, Transco and Williams charge we improperly applied our primary function test, as modified for offshore facilities, to Transco's onshore facilities. While we did note characteristics of certain of the onshore facilities, we did not hold these facilities up to examination under criteria applicable to offshore systems. As the parties suggest, it would not

that in Amerada Hess we effectively expanded the size of facilities that could qualify as gathering when located offshore. However, the "sliding scale" introduced in Amerada Hess is bounded by the incrementally expanding length and diameter of pipelines employed to reach to offshore frontier production areas. The vast majority of Transco's existing offshore facilities do not appear to qualify as lines that serve to access gas extracted from frontier prospects; i.e., Transco's facilities' size does not appear to be a product of the "changing technical and geographic nature of exploration and production" offshore. Consequently, we question the suitability of employing an expanded sliding scale, as set forth in Amerada Hess, as the measure of the size of Transco's lines.

When measured against other facilities found to be gathering, Transco's facilities loom large. Transco seeks gathering status for more than 1,360 miles of pipe with diameters of 20 inches or greater. For example, of the 435 miles of pipelines comprising Transco's Central Texas system, over 70 percent is 20- inches or more in diameter, with almost 50 percent 24 inches in diameter or more. These facilities include 121.64 miles of 30-inch and 55.69 miles of 36- inch line. In addition, segments of the Central Texas system effectively expand these already large diameters by running parallel lines; these portions include approximately 40 miles of 30 and 20-inch looped line, 56 miles of 30- and 36- inch looped line, and 24 miles of 14- and 36- inch looped line. Transco's Southeast Louisiana facilities contain 841 miles of pipe, over half of which is 20 inches or more in diameter, including over 70 miles of 30-inch pipe;

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have been consistent with Commission policy to examine onshore facilities using the Amerada Hess standard applicable to offshore facilities, since the application of the Amerada Hess modifications to the primary function test permit larger and higher pressure facilities to be found to be gathering for reasons unique to conditions offshore.

approximately 31 miles of 20- and 24-inch pipe is looped. Transco's North Padre Island system consists of 93 miles of pipe, over 95 percent of which is 20- inches or more in diameter.

Although the September 1996 order placed emphasis on the large size of certain of Transco's facilities, that order also found that these large facilities "move gas over relatively long distances," that "[i]t also appears that some of the facilities span significant distances without picking up significant, if any, volumes of gas," and finally that "some of the facilities extend beyond processing plants." [14] For example, we found that "the main trunk of the North Padre Island facilities is a 70 mile-long, 24-inch diameter line that has no apparent well connections along its length, and extends over 4 miles beyond the North Padre Island processing plant." [15] Also, we found that "the Tilden/McMillen facilities include an approximately 152 mile-long, 24-inch diameter line which extends approximately 103 miles beyond the Bee County processing plant. Throughout these 103 miles, it appears that the line picks up gas at only three points." [16] In view of such segments among its system's facilities, we concluded that Transco and Williams had "not adequately explained how such existing interstate pipeline facilities that are not located in deep OCS waters, i.e., waters

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[14] 76 FERC ¶ 61,317 at 62,542-43. Footnotes omitted. This fuller contemplation of Farmland factors is particularly pertinent in light of the decision in *Sea Robin Pipeline Company v. FERC*, 127 F.3d 365 (5th Cir. 1997) (*Sea Robin*), in which the court cautioned the Commission against placing undue weight on any single factor, such as size, to determine a facility's primary function. That was not the case here, since as noted, in addition to certain facilities' large size, we found other Farmland factors also demonstrated that these large facilities' primary function was characteristic of transmission.

[15] *Id.*, note 11, at 62,543.

[16] *Id.*, note 12.

in excess of 200 meters, can properly be reclassified as gathering lines under the 'primary function' test. At the very minimum, large portions of the facilities are clearly properly classified as jurisdictional transmission facilities." [17]

We find no argument to persuade us that this determination was in error. We believe our assessment of the Farmland factors was sufficient to reach a finding that certain of Transco's facilities are transporting gas. Further, we believe our reasoning and conclusion are consistent with our past practice in applying our primary function test. Accordingly, we affirm our September 1996 finding that at least one of Transco's numerous pipeline facilities is performing primarily interstate transportation.

Since the September 1996 order, we have altered the application of our primary function test for facilities located offshore. We have observed that onshore the presence of a gas processing plant can generally be taken to demarcate a point at which gathering ends and transportation begins, whereas offshore the location of a processing plant (situated, typically, on or near shore) is largely driven by physical and financial constraints. We have consequently concluded that the behind-the-plant factor is not necessarily determinative of offshore facilities primary function.[18] In addition, we consider whether an offshore system's configuration contains a central point of aggregation, i.e., a point where small lines carrying gas from various wells converge and deliver their collective volumes into a single large line for transport to shore.[19]

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[17] *Id.* Footnote omitted.

[18] *See Sea Robin*, 76 FERC ¶ 61,317 (1999) (*order on remand*), *order denying reh'g*, 87 FERC ¶ 61,384 (2000).

[19] *Id.*

In our September 1996 order, we did not explicitly adapt our primary function analysis in accordance with these subsequent modifications to our test. However, our determination that certain of Transco's offshore facilities are properly classified as jurisdictional transmission did not turn on those facilities' location upstream of onshore processing plants. Further, although we did not seek to identify aggregation points on Transco's offshore lines, the presence of such points, while potentially diminishing the amount of Transco pipe deemed transmission, would nevertheless also serve to highlight the status of some remaining quantity of offshore pipeline that is transporting aggregated gas to shore, and is thereby NGA jurisdictional transmission pipeline. Therefore, we do not believe that reconsideration of Transco's facilities under our primary function test (as it was in 1996 or as it is today) would change our finding that some portion of Transco's facilities are primarily performing jurisdictional transmission.

In the September 1996 order, we speculated upon the potential consequences of finding all of Transco's facilities to be gathering and this speculation extended to the policy implications of such a finding. However, our recognition of possible policy implications did not drive the end result, as Transco and Williams charge. That result—i.e., our finding that not every single one of the facilities presented was gathering—was reached following a straightforward, policy-implication-free consideration of the Farmland factors. Because the all-or-nothing gathering result the parties sought could only be reached by interpreting the Farmland factors in an unconventional manner, we reflected on the precedential complications such an aberrant application of our primary function test could beget in order to explain why we were unwilling to reformulate our routine method for assessing facilities' primary function.

We similarly reject the parties' contention that we allowed Transco' facilities' historic jurisdictional status to drive the

outcome of our primary function test. Additionally, we reject the parties' related claim that we refused abandonment as a means of "entrenching" the existing jurisdictional status of offshore facilities to further objectives set forth in our 1996 Policy Statement. While we presume facilities are properly classified (regardless of whether the Commission has recently, or ever, specifically evaluated the facilities' primary function), this presumption can be overturned by demonstrating that the facilities are being employed to render service inconsistent with their current classification. In this case, our consideration of the physical and geographic characteristics Transco's facilities led us to conclude that certain of those facilities were being used primarily to transport gas; a finding, as we noted, that was in accord with the facilities' prior and present classification and certification as transmission, thereby affirming that status.

The jurisdictional status of facilities is established principally by the facilities' physical characteristics. Nevertheless, we find it helps to also take into account the primary business purpose of the facilities' owner. In this case, that is Transco, an interstate gas transporter. Transco and Williams urge that instead of considering the facilities as they are currently used, i.e., to provide certificated transportation services, we look forward to the facilities' function under Williams' ownership, i.e., to provide NGA-exempt gathering services. This puts the cart before the horse. We first examine facilities as they are currently being used, and in that context the character of the facilities' current owner is relevant. If we determine that the facilities are being used primarily for nonjurisdictional service, we would authorize abandonment.

Williams' nonjurisdictional status had no bearing on our initial decision with respect to the primary function of Transco's facilities as operated by Transco. Transco and Williams note cases in which we took the nonjurisdictional status of a facility's prospective owner into account. Those

cases, like this one, involved an initial assessment to determine whether existing jurisdictional facilities merit abandonment as gathering, and if so, then whether the abandoned facilities would, under new ownership and management, continue to be used primarily for gathering. Only in this latter assessment is the character of the prospective owner an issue, an issue we did not reach in our September 1996 order, because we did not find the facilities merited abandonment by transfer to Williams.

The parties maintain that it is inconsistent for the Commission to mandate that pipelines unbundle gathering from transmission, and then deny a pipeline's request to abandon gathering facilities in an effort to ensure shippers retain NGA protection for NGA-exempt services. Such circumstances and motives are not present here. Here, we do not resist approving an abandonment of gathering facilities; rather, we find that Transco is requesting approval to abandon transmission facilities that are providing NGA-jurisdictional transportation services. We continue to endorse the principle of unbundling as set forth in Order No. 636, but we do so in a manner consistent with our statutory obligation to exercise our traditional regulatory jurisdiction over all facilities subject to the NGA.

The parties point to our discussion of adverse impacts that might arise were Transco to abandon facilities to its affiliate and suggest such impacts motivated our denial of Transco's request. We remain concerned that offshore, absent state control, upon acquisition of Transco's system, Williams may be in a position to engage in anticompetitive actions. However, issues of affiliate abuse, or the exercise of market power, or discrimination, or the denial of access, may be addressed, if need be, in another forum, apart from this or another abandonment proceeding. Our task in an abandonment proceeding is limited to answering the question of whether the primary function of the subject facilities is

gathering. In this case—where we have been presented with a large and complex collection of facilities and asked to reach an across- the-board finding applicable to all of those facilities—the answer is no, for the reasons discussed above and in our September 1996 decision.

Transco and Williams comment that were the Commission to disclaim regulatory jurisdiction under the NGA over all offshore facilities, the Commission's regulatory authority under the OCSLA would continue in effect; the parties speculate that regulation under the OCSLA alone would result in more rational oversight and expedite the exploitation of offshore resources. Merits aside, we do not view this as a viable proposal. The statutes provide similar, but not identical, protections, and subject regulated entities to comparable, but significantly different, requirements. Nevertheless, the NGA and OCSLA are neither optional nor alternative in nature. Where applicable, the provisions of each statute must be enforced—the Commission may not elect not to act. In addition, the NGA and OCSLA are to be applied simultaneously, to complement one another.[20]

For the reasons discussed above, we deny Transco's and Williams' request for rehearing.

The Commission orders:

> Transco's and Williams' joint request for rehearing is denied.

By the Commission.

/s/ Linwood A. Watson, Jr.,

Acting Secretary.

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[20] We treat the OCSLA and NGA as independent grants of statutory authority that "must be applied reciprocally in furtherance of their individual regulatory purposes." *Continental Oil Company v. FPC*, 370 F.2d 57, 66-67 (5th Cir. 1966).

APPENDIX D

FEDERAL ENERGY REGULATORY COMMISSION
Commission Opinions, Orders and Notices

Docket No. CP01-103-000
Docket No. CP01-104-000

Transcontinental Gas Pipe Line Corporation
Williams Gas Processing-Gulf Coast Company, L.P.

ORDER AUTHORIZING ABANDONMENT AND DETERMINING JURISDICTIONAL STATUS OF FACILITIES
(Issued July 25, 2001)

Before Commissioners: Curt Hébert, Jr., Chairman; William L. Massey, Linda Breathitt, Pat Wood, III and Nora Mead Brownell.

On March 12, 2001, Transcontinental Gas Pipe Line Corporation (Transco) submitted an application in Docket No. CP01-103-000, pursuant to section 7(b) of the Natural Gas Act (NGA), seeking Commission approval to abandon facilities located largely offshore Texas and Louisiana, which are part of the North High Island/West Cameron Gathering System, by transfer to its gathering affiliate, Williams Gas Processing-Gulf Coast Company, L.P. (WGP). On the same date, WGP submitted a petition in Docket No. CP01-104-000 requesting that the Commission declare that the facilities it proposes to acquire from Transco will, upon abandonment by transfer to WGP, be gathering facilities and services, exempt from the Commission's jurisdiction under the Natural Gas Act (NGA).

For the reasons discussed below, we will approve Transco's requested abandonment and declare the facilities to be gathering.

I. Background and Proposal

The requested abandonment is part of an ongoing corporate-wide restructuring by The Williams Companies, Inc. (Williams), corporate parent of Transco and WGP, to abandon and transfer (spindown) gathering facilities from Transco and the other Williams-affiliated interstate pipelines into nonjurisdictional gathering companies. The facilities under consideration in these dockets were part of a more comprehensive gathering spindown request filed by Transco and WGP in Docket Nos. CP96-206-000 and CP96-207-000.[1] Those applications were dismissed without prejudice to the applicants' filing another proposal addressing discrete portions of the facilities. Transco states that it has reviewed its gathering facilities on a system- by-system basis under the Commission's primary function test in Sea Robin.[2] Transco states that this application is part of an effort to spindown gathering facilities under the principles of Sea Robin.

Transco states that most of the facilities comprising the North High Island/West Cameron system are the subject of various NGA Section 7(c) certificates issued by the Commission. Transco states that at the time they were acquired or constructed, these gathering facilities were used almost exclusively to deliver system supply gas to support bundled sales services. Transco states that under that historic

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[1] *Transcontinental Gas Pipe Line Corporation*, 76 FERC 61,317 (1996), *order denying reh'g*, 95 FERC ¶ 61,396 (2001).

[2] *Sea Robin Pipeline Company*, 71 FERC 61,351 (1995), *order on reh'g*, 75 FERC 61,332 (1996), *remanded Sea Robin v. FERC*, 127 F. 3d 365 (5th Cir. 1997), *reh'g denied* (February 2, 1998), *order on remand*, 87 FERC 61,384 (1999), *order denying reh'g*, 92 FERC 61,072 (2000), *order denying stay*, 92 FERC 61,217 (2000) (*Sea Robin*).

structure, Transco did not have a need to precisely distinguish between jurisdictional transmission and exempt gathering facilities. Accordingly, the fact that many of the subject facilities were constructed pursuant to NGA certificates is not an indication of whether the facilities actually qualify for exempt gathering status under Section 1(b) of the Natural Gas Act (NGA). Transco states that under the Commission's current reformulated primary function test, the North High Island/West Cameron facilities perform primarily a gathering function.[3]

Transco also requests authorization to abandon its Rate Schedules X- 143 (service with ANR Pipeline Company) and X-249 (service with Columbia Gulf Transmission Company). Transco states that no gas has flowed under either of the X-rate schedule service agreements since 1991. Transco also seeks authority to partially abandon its Part 284 service provided to Motiva Enterprises, LLC, insofar as it pertains to specific receipt points on the North High Island facilities. Transco states that upon abandonment and transfer of the requested facilities to WGP, the referenced receipt points will no longer be available to be used by shippers under the affected blanket services or as a balancing point under a Pipeline Interconnect Balancing Agreement. Transco states that upon approval of this application, Transco will amend affected service agreements and file the necessary conforming changes to its FERC Gas Tariff, such as the termination of tariff sheets and removal of references to the abandoned points/facilities.

Transco proposes to transfer the subject facilities to WGP pursuant to the Transfer and Assignment Agreement dated February 19, 1996, as amended on December 29, 1997, at net book value at the time of closing, resulting in no gain or loss to Transco. Following a Commission order approving aban-

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[3] *See* WGP's Petition at Sections VII and VIII.

donment acceptable to Transco and WGP, Transco proposes to transfer the subject facilities to WGP effective on the last business day of the calendar month following the calendar month of the issuance of such order, or at a mutually agreeable date thereafter. Transco will notify the Commission within ten (10) business days of the transfer of the facilities. Transco states that if this abandonment is approved prior to Transco's next general Section 4 rate case filing, then in accordance with Transco's rate settlement in Docket Nos. RP97-71-000, et al., Transco will make a rate filing as necessary to reflect the spindown after Commission approval. Transco states that the depreciated net book value of these facilities is approximately $21,180,514 as of December 31, 2000.

Transco states that the application to abandon and transfer the North High Island/West Cameron gathering systems is consistent with Williams' ongoing corporate restructuring, whereby the gathering facilities of Williams' interstate pipelines have been unbundled and spundown to companies focused on providing gathering services. Transco states that the spindown of gathering facilities by Williams' interstate pipelines, other than Transco, is largely complete. The Commission has approved those prior spindowns, finding that they will serve the public interest and are consistent with the Commission's industry restructuring and pro-competitive policies. Transco states that for the same reasons, the Commission should likewise approve the instant application.

Transco states that WGP is currently operating the subject facilities as Transco's agent and WGP plans to negotiate post-spindown service agreements with all shippers. Transco states that WGP will continue to operate the facilities in an open and nondiscriminatory manner. In that regard, while the spundown facilities will not be subject to the Commission's NGA jurisdiction, the facilities are subject to the Outer

Continental Shelf Lands Act (OCSLA),[4] which mandates that all Outer Continental Shelf (OCS) pipelines provide "open and nondiscriminatory access" to their OCS facilities.[5]

In prior spindown cases, the Commission has required the pipeline to adopt tariff provisions ensuring that it will not provide any undue preference to affiliates. Transco states that Section 36 of the General Terms and Conditions of Transco's tariff already includes such provisions.

II. Description of facilities

Transco states that the North High Island/West Cameron facilities which are the subject of this application are located primarily offshore Texas and offshore and onshore Louisiana. Transco states that the offshore facilities are located in the Galveston area, the High Island area, and the West Cameron area; the onshore facilities are located in Cameron and Vermillion Parishes, Louisiana. Transco states that this gathering system consists of two subsystems that are operated for the most part independently, i.e., the North High Island subsystem collecting gas from the west, and the West Cameron subsystem collecting gas from the east. Transco states that the two subsystems converge onshore in Cameron Parish, Louisiana, where the gas is ultimately delivered into the Southwest Louisiana transmission lateral, jointly owned by Transco, Tennessee Gas Pipeline Company, and Florida Gas Transmission Company. Transco states that gas from the North High Island subsystem is separated and dehydrated at Transco's Compressor Station 44 in Cameron Parish; and gas from the West Cameron subsystem is separated and dehydrated at the Cameron Meadow Processing Plant, owned by Williams Field Services Group, Inc. Transco states that

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[4] 43 U.S.C. § 1331, *et seq.*

[5] 43 U.S.C. § 1334 (f)(1)(A).

gas from both subsystems is processed at the Cameron Meadows Plant when economics warrant.

The North High Island/West Cameron facilities which are the subject of this application are:

1. Pipeline—approximately 217.128 miles of 4-inch to 30-inch pipeline, consisting of:

0.57 miles of 3.5-inch pipeline

1.51 miles of 4-inch pipeline

1.15 miles of 4.5-inch pipeline

3.89 miles of 6-inch pipeline

8.02 miles of 8-inch pipeline

17.092 miles of 10-inch pipeline

45.227 miles of 12-inch pipeline

53.054 miles of 16-inch pipeline

86.355 miles of 24-inch pipeline

00.26 miles of 30-inch pipeline

2. Station 44 Separation and Dehydration (Johnson Bayou Plant), located in Cameron Parish, Louisiana, consisting of: two 100-HP Waukesha and one 1,000 HP Waukesha Flash Gas Compressors, with a total sea level horsepower of 1,200, and separation and dehydration facilities.

3. Station No. 44 Compression, located in Cameron Parish, Louisiana, consisting of: three 3,830-HP Solar Centaur Engines driving three compressors with a total sea level horsepower of 11,490. One of the three Solar Centaur compressors is jointly owned with Gulf South Pipeline Company, LP.

4. Minor compression owned by Transco on Shell High Island Block 179-L, offshore Texas.

Certain segments of the North High Island pipelines are owned by Transco and other third parties.[6] The North High Island/West Cameron facilities proposed to be abandoned include a number of valves, meters and related appurtenant pipeline facilities located throughout the systems. These related facilities constitute an integral part of the nonjurisdictional gathering function of the facilities sought to be abandoned and are also proposed to be abandoned and declared nonjurisdictional.

III. WGP's Petition for Declaratory Order

WGP states that the North High Island/West Cameron facilities should be declared nonjurisdictional gathering facilities because: (1) the length and diameter of the pipelines are relatively small; (2) numerous wells are located throughout the system; (3) the operating pressures are consistent with offshore gathering; (4) the compression at Station 44 is for increasing the volume of gas gathered into the system as the final stage of gathering, not for downstream transportation; (5) all the facilities are upstream of the Cameron Meadows Processing Plant; (6) the system configuration resembles an inverted "U," or in a manner analogous to the upstream legs of the "Y" shaped Sea Robin system; and (6) the facilities, except for a quarter mile piece of pipe, do not extend beyond the system's central aggregation point.

WGP states that the North High Island/West Cameron facilities also qualify as gathering under the central aggregation point test relied on in Sea Robin. WGP states that the North High Island facilities and the West Cameron facilities converge at the Station 44 complex in Cameron Parish, Louisiana, which constitutes the system's central aggregation point. All of the facilities to be spundown are

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[6] Transco states that Gulf South Pipeline Company, LP, Shell Offshore, Inc. and Exxon Company, U.S.A. Inc. also have ownership interests.

upstream of, and feed into, that central aggregation point, with the exception of a 0.26 mile, 30-inch plant related pipe directly downstream of the Cameron Meadows Processing Plant that is needed to deliver gas into the Southwest Lateral.

Interventions and Protests

Transco's application for abandonment authorization in Docket No. CP01- 103-000 was published in the Federal Register on March 23, 2001.[7] Timely, unopposed motions to intervene were filed by companies as listed in the Appendix.[8] Washington Gas Light Company, Superior Natural Gas Corporation and Walter Oil & Gas Corporation, and the Producer Coalition filed untimely motions to intervene. We find that granting the motions to intervene out-of- time will not delay the proceeding, prejudice the rights of any party, or place an additional burden on existing parties. Accordingly, for good cause shown, we will grant the late-filed motions to intervene.[9] Consolidated Edison Company of New York, Dynegy Energy Marketing and Trade, Indicated Shippers, KeySpan Delivery Companies, Producer Coalition, Superior Natural Gas Corporation and Walter Oil & Gas Corporation, and Sunoco Inc. filed protests. The Transco Municipal Group and the Municipal Gas Authority of Georgia filed comments.

WGP's petition for a declaratory order in CP01-104-000 was published in the Federal Register on March 23, 2001.[10] Timely, unopposed motions to intervene were filed by

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[7] 66 FR 16218.

[8] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214 (2000).

[9] 18 CFR § 385.214(d) (2000).

[10] 66 FR 16219.

companies as listed in the Appendix.[11] Consolidated Edison Company of New York, Indicated Shippers, KeySpan Delivery Companies, Superior Natural Gas Corporation and Walter Oil & Gas Corporation, and Sunoco Inc. filed protests.

On May 9, 2001, Transco and WGP filed an answer to the protests that had been filed up to that time. On July 19, 2001, Transco and WGP filed answers to the protests filed June 11 and June 20, 2001. Although our procedural rules do not permit answers to protests, or answers to answers, we may, for good cause, waive this provision.[12] We find good cause to do so in this instance in order to insure a complete and accurate record in this proceeding.

We address the substance of the protests and responsive pleadings below.

IV. DISCUSSION

A. Abandonment

Since the facilities proposed to be abandoned were certificated to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the abandonment of Transco's certificated interests in the OCS facilities requires Commission authorization under NGA section 7(b).

Transco historically designed, constructed and operated its systems in order to perform a bundled service—purchasing and aggregating gas supplies and transporting those supplies for sale to local distribution companies at the city gate. However, since the restructuring of the natural gas industry, Transco provides an array of unbundled services, such as

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[11] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214 (2000).

[12] 18 CFR § 385.213(a)(2) (2000).

transportation, storage, and fully unbundled sales services, to a wide variety of customers. In its principal role as a transporter, Transco no longer requires its extensive gathering facilities to provide gas sales. Moreover, most of Transco's sales are made at its pooling points, not at the wellhead. We expect abandonment will permit Transco to eliminate unnecessary expenses associated with these facilities and we expect WGP will make efficient use of the acquired facilities. Accordingly, for the reasons discussed below, we find that the public convenience and necessity permit Transco to abandon by transfer to WGP the portion of the offshore North High Island/West Cameron Systems found to be gathering herein.

B. Opposition to the Abandonment

Various parties oppose the abandonment arguing that the facilities have and continue to perform a transmission function, and that any transfer of facilities to WGP will result in a lack of competitive alternatives and allow WGP to wield substantial market power over shippers.

1. Impact on Existing Shippers

Indicated Shippers, an ad hoc group of companies interested in gas transported on Transco's system,[13] object that the proposal would undo decades of Commission jurisdiction over the entirety of Transco's system and may permit the Transco corporate family to impose rates in excess of those previously deemed just and reasonable. Sunoco, Inc. (R&M) (Sunoco) agrees. Indicated Shippers object to Transco transferring a portion of its integrated system, including

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[13] The members of the Indicated Shippers include: Amerada Hess Corporation, Amoco Production Company and BP Energy Company, Anadarko Petroleum Corporation, Burlington Resources Oil & Gas Company, Chevron U.S.A. Inc., Conoco Inc., Exxon Mobil Corporation, OXY USA Inc., Shell Offshore Inc., and Texaco Natural Gas, Inc. Each of the members has also intervened separately.

facilities currently functionalized as transmission, to an unregulated affiliate. Indicated Shippers also dispute the contention that maintaining these facilities as transmission hinders Transco's ability to compete with exempt gatherers, pointing out that Transco may discount its rates to compete and that Transco has failed to identify any gatherer against which it cannot effectively compete. Indicated Shippers contends that if the systems remain regulated, Transco will not be able to collect rates in excess of its maximum tariff rates. Indicated Shippers further states that in the absence of competitive alternatives, the abandonment of the North High Island/West Cameron systems will allow WGP to wield substantial market power permitting them to exact monopoly rents from shippers.

Dynegy Marketing and Trade (Dynegy) believes similarly that the spindown will stifle competition. Dynegy argues that since Williams Field Services (WFS), another Transco affiliate, operates Transco's jurisdictional facilities immediately downstream from the High Island/West Cameron system, WGP will hold a competitive advantage over all non-affiliated third parties who can only provide access to their own gathering systems. It argues that any advantage of Commission imposed unbundling is lost here because of the control that Transco has given WFS over the mainline facilities.

Sunoco states that WGP appears on planning to disavow Transco's existing contractual obligations and to force shippers to renegotiate long-term agreements that had been entered into at arm's length. Sunoco states that according to Transco, after the transfer of the subject facilities to its non-jurisdictional affiliate, "WGP plans to negotiate post-spindown service agreements with all shippers." Sunoco submits that such renegotiation is totally inappropriate where shippers have existing long-term contracts. However, if the spindown is approved, Sunoco requests that the Commission

require Transco to file revised tariff sheets in its pending section 4 rate case in Docket No. RP01-245-000 to reflect removal of the facilities from rate base and the elimination of the operation and maintenance cost from its cost of service.

In a related vein, Con Edison requests that the Commission require that Transco present evidence as to the market value of the subject facilities and, if that value exceeds the net book value, require Transco to offset the excess against extraordinary costs underlying its proposed general rate increase in Docket No. RP01-245-000.

The KeySpan Delivery Companies request that the Commission not only approve the spindown of the North High Island/West Cameron facilities, but all of the remaining production area facilities and require under section 5 of the NGA that Transco's rates be adjusted to reflect the removal of the related costs from Transco's jurisdictional rates. The Transco Municipal Group and the Municipal Gas Authority of Georgia (collectively Municipal Group) likewise request that Transco's rates be modified under Transco's pending section 4 proceeding in Docket No. RP01-245-000. If the spindown is approved after September 1, 2001, the effective date of the pending section 4 proceeding, Municipal Group requests that Transco be required to file a limited section 4 rate case to reflect fully the rate effects of the spindown. Dynegy agrees, stating that the Commission should take action under section 5 of the NGA to reduce Transco's rates if the proposed transfer of facilities occurs after the conclusion of the test period in Transco's pending section 4 proceeding. Alternatively, Dynegy requests that the Commission set this issue for hearing in the Docket No. RP01- 245-000 proceeding.

Producer Coalition, another ad hoc group of natural gas producers, who market gas on Transco's system,[14] suggests that the Commission require Transco/WGP to disclose the proposed rates and conditions of future service on the North High Island/West Cameron facilities, prior to the issuance of a Commission order on the spindown. Producer Coalition disputes Transco/WGP's contention that WGP is negotiating with its customers and offering a package of services. It contends that WGP has failed to make any disclosure of the rates and terms and conditions it intends to offer. Without this advance information, Producer Coalition states that the shippers are left to assume the worst—that WGP in fact intends to exploit its market power.

Indicated Shippers also question the appropriateness of Transco abandoning 40 receipt points from the FT agreements. It states that the abandonment would also delete these receipt points from those available to IT- feeder shippers that ship gas under Transco's tariff to FT shippers. Indicated Shippers states that, contrary to Transco's assertion, the public interest is not served by the unilateral termination or degradation of existing firm services or by the abandonment of IT-feeder facilities to a non-jurisdictional affiliate.

Superior Natural Gas Corporation and Walter Oil & Gas Corporation offer similar arguments opposing the spindown. They allege that the proposal is nothing more than a vehicle to significantly increase the production area rates that marketers and producers must pay over the regulated IT-feeder rates currently being charged. They also believe that the primary function of the facilities at issue remains transmission.

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[14] This group consists of Dominion Exploration & Production, Inc., Devon Energy Corporation, Forest Oil Corporation, The Houston Exploration Company, Newfield Exploration Company, Ocean Energy, Inc., and TotalFinaElf E&P U.S.A., Inc. Ocean Energy, Inc. has already intervened in this case.

a. Transco and WGP Response

Transco/WGP believe that the Indicated Shippers' protest should be denied, because it is largely a collateral attack on the Commission's court-approved policy [15] favoring the spin-down of gathering facilities, which Transco/WGP contend is consistent with the Commission's unbundling policies and other pro- competitive objectives. They also contend that the Indicated Shippers' functional analysis of the facilities unduly relies on non-physical factors, such as prior certificate and rate classification, system integration, and effects on competition, ownership and business purpose, which the courts have repeatedly held are of little or no relevance to the jurisdictional status of facilities under section 1(b) of the NGA. As to the issues of competitive factors and market power, Transco/WGP state that the Commission has found them irrelevant in determining the function of OCS facilities.[16] Transco/WGP find it disingenuous that some of the protestors consistently oppose spindowns by interstate pipelines, while at the same time some of them enjoy non-NGA regulated status for their own OCS gathering pipelines. Transco/WGP also point out that, even in the absence of continued NGA regulation of these facilities, Indicated Shippers still will be protected by the open access and nondiscrimination provisions of the OCSLA.

Transco/WGP agree with KeySpan's request to expand the scope of the spindown proposal, and indicate that the Commission could meet that concern simply by granting rehearing of Transco/WGP's comprehensive spindown proposal requested in Docket No. CP96-206-000 and CP96-

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[15] Citing *Conoco Inc. v. FERC*, 90 F.3rd 536 (D.C. Cir. 1996), *cert. denied*, 519 U.S. 1142 (1997) (Conoco); *Pacific Gas and Electric Company v. FERC*, 106 F.3rd 1190 (5th Cir. 1997).

[16] Citing *Mid Louisiana Gas Company*, 67 FERC 61,255 at 61,851 (1994).

207-000. As to the requests that the Commission require Transco to remove from its rates the cost of the facilities to be transferred, Transco states that if the Commission approves the spindown prior to the effective date of its next effective rate case, it will make a rate filing to reflect the spindown as approved.

Finally, Transco/WGP state that Con Ed's request (to offset the difference between the net book value and the market value of the subject facilities) should be denied as the Commission allows the transfer of facilities at net book value.

b. Commission Response

Transco, like many interstate pipelines, found after restructuring its system consistent with Order No. 636, and moving from a bundled, merchant function to an unbundled, transportation function, that it no longer needed all of its existing system facilities. The Commission routinely grants requests to abandon facilities that we determine were used to gather gas supplies in support of the merchant gas sales function a pipeline no longer offers.[17] The fact that these facilities were previously certificated is not determinative of whether the present or future public convenience and necessity allow their abandonment. Further, the fact that a certificate exists for a given facility may not be determinative of its true jurisdictional status. As we stated in CNG Transmission Corporation, "until the Commission actually scrutinizes the facilities under the primary function test, the actual jurisdictional status of the facilities cannot be definitively determined." [18] Here, we find it reasonable for Transco to seek to abandon the proposed facilities via spindown to its gathering affiliate because this is the proper

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[17] *See Trunkline Gas Company*, 95 FERC 61,337 (2001); *Natural Gas Pipeline Company of America*, 94 FERC 61,186 (2001); and *Northern Natural Gas Company*, 93 FERC 61,101 (2000).

[18] 67 FERC 61,330 at 62,177 (1994).

forum to apply the primary function test to these facilities. We also find that the record in this proceeding is adequate for us to determine the proper function of the facilities.

The protestors argue that existing shippers will be adversely affected by the spindown because there will be no competition and they will have to deal with an unregulated entity for the same service that they currently receive from Transco. The transfer of gathering facilities and services by interstate pipelines to nonjurisdictional entities is consistent with the unbundling policies of Order No. 636 and should, in the long run, promote competition within the gathering industry.[19] As we have noted, section 1(b) of the NGA exempts gathering from the jurisdiction of this Commission. Thus, if the primary function of facilities for which abandonment is sought is found to be gathering, the Commission has no discretion to withhold such authorization. Here, consistent with the discussion below, we are finding that a portion of High Island/West Cameron facilities perform a gathering function. The remainder of the facilities perform a transmission function.

Nor is the issue of competition relevant to whether or not the Commission will regulate an affiliated gatherer's rates or terms and conditions of service after it acquires abandoned facilities. The Commission has no authority under the NGA to regulate a gatherer's rates or its terms and conditions of service.[20] We find that the separate rate structure shippers will encounter after the spindown is consistent with the unbundling principles expressed in Order No. 636, where the Commission noted that shippers are expected to pay a separate rate for each separate service they receive. The shippers, in effect, have been on notice since February 21,

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[19] *See Northern Natural Gas Company*, 93 FERC 61,101 at 61,273 (2000).

[20] *Conoco.*

1996, when Transco filed its initial application in Docket No. CP96-206-000, that it proposed to abandon, among others, the facilities at issue here. This interval of over five years has provided an extended transition period for these shippers to contemplate their service options in the event the abandonment of these facilities was approved.[21]

In addition, the facilities at issue here are located on the OCS and will become subject to the OCSLA upon approval of the spindown. Under the OCSLA, WGP is prevented from discriminating against any shipper that seeks access to the facilities it will acquire in this proceeding from Transco. Assuming all existing shippers using the North High Island/West Cameron System want to continue moving their gas via the same path, both they and WGP will have a vested interest in reaching mutually agreed upon terms and conditions for continuation of the existing service. Since the OCSLA guarantees shippers open and nondiscriminatory access to offshore facilities, WGP cannot discriminate between shippers and has incentive (fully utilized facilities) to negotiate fairly with Transco's existing shippers. In Transco/WGP's answer, WGP states that it intends to negotiate post-spindown agreements with all shippers that should not result in degraded service. Since we will continue to employ our NGA authority to ensure that Transco's jurisdictional rates remain just and reasonable, WGP's commitment, along with the protections provided by the OCSLA, will act to ensure adequate access and service to

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[21] *See NorAm Gas Transmission Co.*, 78 FERC 61,265, at 62,128 (1997). We previously conditioned the spindown or spinoff of gathering facilities on the acquiring entity's continuing to provide comparable service to existing shippers for a two-year term. This two-year time was intended to serve as a transitional period, during which shippers subject to NGA-regulated transportation service agreements could consider their options as NGA-exempt gathering customers. In *Conoco*, however, the court ruled that the Commission lacked jurisdiction to impose this particular condition on abandonments.

existing customers. We note that section 330.2 of our OCSLA regulations requires that WGP report the terms under which it provides service to its shippers.[22] In the event that any shipper believes that either Transco or WGP have violated its statutory requirements under the OCSLA, or that the terms of service WGP offers any existing shipper prove inconsistent with the OCSLA's requirements, the shipper can file a complaint and the Commission will investigate any such complaint in a timely manner.[23] Further, Transco already has in its tariff standards of conduct for gathering affiliates that prevent it from acting in a discriminatory manner by guarding against the risk of affiliate abuse and ensuring an arms length relationship between it and WGP.[24]

Dynegy, however, doubts the level of protection afforded by Transco's standards of conduct provisions, because WFS administers the immediate downstream mainline transportation rights on behalf of Transco. However, Transco must adhere to the affiliate provisions, regardless of whether it or WFS operates the mainline facilities. Transco is bound by its tariff and cannot seek to avoid its responsibilities regarding its jurisdictional mainline facilities simply by contracting operational control to its affiliate, WFS. In operating such facilities, WFS is stepping into Transco's jurisdictional shoes, and Transco cannot allow WFS to provide service in a manner contrary to Transco's tariff.

As to the requests that Transco adjust its rates, we will require Transco, consistent with Section 154.303(c)(2) of our regulations, to remove the cost of the facilities abandoned and transferred here from the rates it proposes to charge in its

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[22] 18 CFR § 332.2 (2000).

[23] 18 CFR § 385.206 (2000).

[24] *See* Third Revised Sheet No. 350, Third Revised Volume No. 1 to Transco's FERC Gas Tariff.

current rate proceeding in Docket No. RP01-245-000. Thus, we will deny Dynegy's request for a hearing.

Finally, we disagree with Con Ed's objection to Transco's proposed transfer of facilities to WGP at net book value. Transco will not realize any gain from the transfer of its facilities which it could share with its ratepayers. Therefore, Transco's ratepayers will be in the same position after transfer of the facilities as before the transfer. We find that ratepayers will not be harmed, and that the transfer of the facilities at net book value is appropriate.

2. Changed Position on Facilities

Indicated Shippers argue that Transco has previously argued that its offshore and onshore facilities were transmission facilities because they constitute a unitary, interdependent and integrated pipeline system that have always been regulated. They contend that Transco has not justified its change in functionalization of the facilities from transmission to gathering. The Producer Coalition and Superior/Walter argue similarly.

a. Transco/WGP Response

Transco/WGP contend that the factors these protestors rely on (i.e., prior certificate and rate status, integrated nature of facilities, ownership by an interstate pipeline, reliance on past regulation, and the presence or absence of competition) are of little or no relevance to the jurisdictional status of the facilities.

b. Commission Response

We find no cause to disallow Transco the right to claim its facilities perform a gathering function, when in the past it may have advocated the facilities function as transmission. As noted above, the Commission has consistently found that a pipeline's functionalization of facilities for rate and accounting purposes does not determine the function of the

facilities for purposes of jurisdiction under section 1(b) of the NGA. How pipelines historically functionalized their facilities for rate and accounting purposes does not prevent the Commission from applying the primary function test to determine the current jurisdictional status of the facilities.[25] Here, we are finding that portions of the High Island/West Cameron System do, in fact, perform a gathering function and are therefore exempt from our jurisdiction under section 1(b) of the NGA. However, as we stated above, those facilities will remain subject to the OCSLA's requirements for open and nondiscriminatory access for all shippers.

C. Jurisdictional Status of Facilities

WGP asks us to declare that the North High Island/West Cameron System would be non-jurisdictional gathering facilities if operated as described in its petition.[26]

Under NGA section 1(b), the Commission has jurisdiction to regulate the transportation and sale for resale of natural gas in interstate commerce and any natural gas company engaged in that transportation or sale. Section 1(b) states, however, that the Commission's jurisdiction does not extend to facilities used for the production or gathering of natural gas. To determine whether particular facilities perform primarily a gathering or transmission function, the Commission considers the criteria articulated in Farmland

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[25] *See Southern Natural Gas Company, et al.*, 79 FERC 61,076 at 61,379 (1997).

[26] Transco's proposed spindown is being undertaken at the same time as Transco seeks in Docket No. RP92-137-050 to implement a two-part, production area, straight fixed variable rate proposal, and firm-to-gathering rate design. The Commission addressed these issues in its May 31, 2001 order in that proceeding, 95 FERC 61,322 (2001).

Industries, Inc., (Farmland) [27] as modified by Amerada Hess Corporation (Amerada Hess) [28] and Sea Robin.

In Farmland, the Commission enumerated several physical and geographic factors to be considered in determining the primary function of a facility, including: (1) the facility's length and diameter, (2) the extension of the facility beyond the central point in the producing field, (3) the facility's geographic configuration, (4) the location of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) operating pressures of the facility.[29] The Commission does not consider any single factor to be determinative and recognizes that all factors do not necessarily apply in all situations.

Over the past decade, the Commission found it necessary to modify the primary function test to recognize the unique physical characteristics of offshore pipeline facilities built on the OCS. In Amerada Hess, the Commission acknowledged that technological advances make it possible to drill for gas at increasing offshore depths. Thus, following Amerada Hess, the Commission has applied a "sliding scale which will allow the use of gathering pipelines of increasing lengths and diameters in correlation to the distance from shore and the water depth of the offshore production area." [30] This "modified primary function" test recognizes that a relatively long pipeline on the OCS may be consistent with a primary function of gathering or production where onshore it would not.

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[27] 23 FERC 61,063 (1983).

[28] 52 FERC 61,268 (1990).

[29] In addition to the Farmland factors, the Commission considers these non-physical criteria in its jurisdictional analysis: (1) the purpose, location, and operation of the facility, (2) the general business activity of the owner of the facility, and (3) whether the jurisdictional determination is consistent with the objectives of the NGA and Natural Gas Policy Act.

[30] *Id.* at 61,988.

In order to further clarify the jurisdictional status of offshore facilities, the Commission issued an OCS Policy Statement [31] which added a new factor to the primary function test concerning facilities that are designed to collect gas produced in water depths of 200 meters or more. The Policy Statement creates a presumption that these deep water facilities are gathering facilities up to the point or points of interconnection with the interstate pipeline grid. Aside from this presumption concerning deep water facilities, the Policy Statement left the application of the primary function test unchanged.

More recently, as a result of the court's opinion in Sea Robin, the Commission has reconsidered the primary function test in view of the unique challenges presented in the attempt to apply Farmland factors to offshore facilities. Sea Robin vacated and remanded Commission orders that found under the primary function test, that Sea Robin's OCS pipeline facilities were jurisdictional transmission facilities. In its primary function analysis, the Commission excluded most of the Farmland factors because they were difficult or impossible to apply to the distinct activity of retrieving gas from the OCS. Thus, the only physical factor considered by the Commission was the size and length of Sea Robin's pipeline. The Commission also gave weight to non-physical criteria such as business purpose, ownership and prior certification of the facilities.

The *Sea Robin* court found, among other things, that the Commission's focus primarily on the length and diameter of the overall system was not reasoned consideration. Further, the court acknowledged that non-physical considerations are

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[31] Gas Pipeline Facilities and Services on the Outer Continental Shelf—Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act, 74 FERC 61,222 (1996), *order dismissing reh'g*, 75 FERC 61,291 (1996).

relevant in the analysis but that they are secondary to physical considerations which must be used in determining where gathering ends and transportation begins.

On remand, the court allowed the Commission to reformulate its primary function test—to replace those physical and operational criteria that are not relevant to the characteristics of OCS pipelines with other criteria that are. The court also allowed that the Commission could consider suggestions made by Sea Robin that portions of its system were predominantly involved in gathering while other portions were transmission.

In the order on remand in Sea Robin, the Commission took the court's suggested approach and reconsidered the application of the primary function test to the OCS facilities and concluded that the "behind-the-plant" factor was not necessarily determinative when the primary function test is applied to offshore facilities. Rather, the Commission decided to assess the physical configuration of a pipeline system to determine if there is a central location where gas is aggregated for further transportation to shore. The Commission concluded that it would view such a location as being the offshore equivalent of the onshore "central-point-in-the-field" factor of the primary function test.

In sum, the reformulated primary function test (1) adopts an additional analytical element applicable to systems that contain a centralized aggregation point, (2) adjusts the weight afforded to the "behind-the-plant" criterion so that the location of the processing plants is not necessarily determinative and can be outweighed by other factors, and (3) focuses primarily on physical factors. After applying the reformulated primary function test to Sea Robin's system, the Commission determined that gathering on Sea Robin ends at an internal point on the pipeline's certificated system—that point being Sea Robin's Vermillion Block 149 Compression Station where gas from numerous production platforms is

aggregated—and that transportation occurs over the remaining and longest part of its system which consists of a straight, large diameter trunkline that delivers gas to onshore processing plants.

1. Protests

Indicated Shippers protests WGP's request for a declaratory order stating that in the OCS Policy Statement, the Commission rejected calls by Transco and other companies that all OCS facilities be found to be gathering. Indicated Shippers argues that the Policy Statement provides that new facilities located in water depths of 200 meters or more will be presumed to be gathering, but that the Commission would not withdraw its jurisdiction, absent changed circumstances, for existing facilities in shallower waters. Indicated Shippers submits that the facilities at issue are located in waters shallower than 200 meters and that Transco has not demonstrated that the primary function of the facilities has changed. Sunoco contends similarly and states that the overwhelming majority of the facilities subject to the spindown are not characteristic of gathering facilities. Likewise, Superior/Walter argue that Transco has not shown that the facilities are, in fact, gathering rather than transmission.

Indicated Shippers and the Producer Coalition also dispute Transco's reliance on Sea Robin as the primary support for their request to refunctionalize the North High Island/West Cameron facilities. In particular, Indicated Shippers object to the new "central aggregation point" test added to the OCS criteria and point out that certain parties have sought court review of the Sea Robin orders setting forth the new test. Indicated Shippers also note that numerous wells to be attached to the two systems are located some distance from any of the Transco facilities. They submit that the gathering function is applicable to these facilities, not the Transco facilities at issue. Indicated Shippers also note that a number

of the facilities at issue are jointly owned with other pipelines, and request that the Commission investigate whether, from the perspective of the operations and activities of the other owners, the facilities should remain transmission.

Indicated Shippers also submit that a central factor in determining the primary function of the facilities at issue is the overall business purpose of the system. They submit that the OCS transmission facilities are part of Transco's integrated pipeline system.

Producer Coalition primarily objects to the services using the facilities no longer being subject to rate caps if the Commission determines the facilities to be gathering. Producer Coalition suggests that the Commission take no action on the spindown until after the United States Court of Appeals for the D.C. Circuit decides the Sea Robin case. Like Indicated Shippers, Producer Coalition submits that, rather than the reformulated modified primary function test announced in Sea Robin, the Commission should adopt the "feeder line test" described in the legislative history to Section 5(f)(2) of the Outer Continental Shelf Lands Act (OCSLA). Under the feeder line test, gathering extends from the wellhead to the point where the gas is first collected and treated to remove free water in preparation for injection into a pipeline for transportation to shore. Producer Coalition believes that since the facilities listed in the application and petition appear to be downstream of the platform separators and treating facilities, they are not gathering facilities.

Producer Coalition also believes that, even if the Commission's Sea Robin order is sustained, the Transco facilities are not used for a gathering function. It notes that Transco and WGP rely on the Commission's central point of aggregation test. However, it states that the Commission determined in later orders that the primary function of offshore facilities was not reduced to simply identifying the

first fork or interconnection in a line leading from shore.[32] It stresses the integrated nature of Transco's system and indicates that the Commission takes the aggregation point on a system into account along with other factors of the primary function test.

Indicated Shippers, the Producer Coalition and Sunoco all argue that the size and scope of the North High Island/West Cameron facilities are highly indicative of a transmission function. They further argue that WGP's reliance on the "Y" analysis defeats the purpose, since the point of aggregation occurs onshore, rather than offshore like Sea Robin. Indicated Shippers and the Producer Coalition contend that Transco's proposal is flawed, because it contains more than 208 miles of pipeline, including more than 86 miles of 24- inch pipeline, that perform strictly a transmission, not gathering function.

KeySpan states that if the Commission finds that the North High Island/West Cameron facilities perform a gathering function, then the offshore portion of Transco's Mobile Bay expansion facilities, which were certificated in Docket No. CP97- 92-000,[33] should be considered non-jurisdictional as well because the facilities exhibit similar characteristics.

a. Transco/WGP Response

Transco/WGP contend that the Indicated Shippers' functional analysis of the facilities unduly relies on non-physical factors, such as prior certificate and rate classification, system integration, and effects on competition, ownership and business purpose, which the courts have repeatedly held are of little or no relevance to the jurisdictional status of facilities under section 1(b) of the NGA. Transco/WGP also point out that, even if the absence

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[32] *See Dauphin Island Gathering System*, 93 FERC 61,198 at 61,654 (2000).

[33] 76 FERC 61,317 (1996).

of continued NGA regulation of these facilities, Indicated Shippers still will be protected by the open access and nondiscrimination provisions of the OCSLA.

Contrary to Indicated Shippers' contention that the Sea Robin decision is too broad an interpretation of the NGA section 1(b) exemption, WGP states that it showed in that case that the Commission's reformulated primary function test results in too limited a view of the exemption. Nevertheless, Transco/WGP state that they relied on Sea Robin to guide the scope of the instant spindown, while reserving their right to challenge any findings in appropriate proceedings. Transco/WGP submit that Sea Robin provides compelling support for non-jurisdictional status for the subject spindown, in that the legs of the North High Island/West Cameron system are comparable to the upstream legs of the Sea Robin system which were ruled nonjurisdictional.

b. Commission Response

We conclude, for the reasons discussed below, that an assessment of the primary function factors, as modified with respect to offshore facilities, demonstrates that only a portion of the North High Island/West Cameron facilities at issue here are performing primarily a gathering function and will continue to be used in this capacity following their abandonment by sale to WGP. The remainder of the facilities perform a transmission function.

The facilities consist of two subsystems, the North High Island and West Cameron, that generally operate independently, with the North High Island facilities collecting gas from the west in Offshore Texas and the West Cameron facilities collecting gas from the east in Offshore Louisiana. The two systems converge onshore at a complex in Cameron Parish, Louisiana, consisting of Transco's Compressor Station 44 (Johnson Bayou Plant) and Williams Field

Services' Cameron Meadows Processing Plant, before ultimate delivery into the Southwest transmission lateral jointly owned by Transco, Tennessee Gas Pipeline Company, and Florida Gas Transmission Company. The Commission finds it appropriate to separate the North High Island and West Cameron subsystems and consider them independently for purposes of applying the primary function test.

The North High Island subsystem consists of approximately 174 miles of 4 to 30- inch pipeline. The majority of the facilities are relatively small, with the lines ranging from 4 to 24-inches in diameter. The longest segment is a 63 mile, 24-inch Line C that connects all the upstream facilities with the plant complex onshore. We find that it is along this line that the primary function of the facilities changes from gathering to transmission. The 24-inch Line C interconnects in High Island Block 10 with a 12 mile 16-inch line and with three short four- inch lines. While Line C retains its 24-inch diameter downstream of this point, it nevertheless serves as the central point of aggregation for the subsystem, where all the gas gathered upstream is delivered to a single point for transportation onshore. Although the North High Island Block 10 point does not exhibit as strong an indication of a marked physical change in facilities as was the case in Sea Robin, we nevertheless find it functions as an aggregation point that may be interpreted as indicating a demarcation of gathering and transmission functions.

Upstream from the Block 10 point, the length and diameter of the numerous pipelines are short and small compared to the facilities found to be gathering in Sea Robin. These line sizes are common for offshore gathering facilities, and even the 24-inch line upstream of the central aggregation point does not necessarily denote a transmission function. These lines are sized appropriately to gather the large volume of gas that is collected from the various wells located throughout the production area in which the facilities are located. In fact,

wells are located all along the length of the lines, up to the High Island Block 10 juncture. While not all of the wells may be directly connected to these lines, that does not disqualify the lines from a finding of gathering. It merely reflects the nature of offshore production, where gas from numerous wells is aggregated at production platforms for movement onshore.

The North High Island subsystem is configured in the shape similar to an inverted "Y" or "U" with the 4-inch, 12-inch, and 24-inch lines branching out from a central point at High Island Block 10. Consistent with Sea Robin, the legs upstream from the central point intersect with supply laterals throughout their length. This configuration is consistent with a gathering function. However, from the Block 10 junction downstream, we find that the 24-inch line performs a transmission function. From that point, the 24-inch line no longer collects gas from the surrounding area, instead, it transports gas already gathered onshore for treatment.

There is no compression located along the North High Island facilities upstream of the Block 10 juncture,[34] which means that the system operating pressures of between 800 and 1,300 psig are a function of the wellhead pressures. The wellhead pressures act to push the gas through the facilities, which is typical of a gathering function.[35] These operating pressures are consistent with those of other offshore facilities found to be gathering.[36]

In addition, there are no processing plants located on or connected to the North High Island facilities found to be gathering here. The processing facilities are located on the

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[34] WGP states that there is one minor compression facility on a production platform connected to one of the upstream legs.

[35] *See Tarpon Transmission Company*, 78 FERC 61,025 (1992).

[36] *See Trunkline Gas Company*, 95 FERC 61,337 (2001).

transmission facilities onshore. We have previously discussed the impracticality of locating processing plants offshore [37] and concluded that, in the offshore context, the absence of processing plants is of little value in assessing the primary function of facilities.

On balance, we find that the North High Island subsystem, upstream of the Block 10 point, performs a gathering function and, accordingly, is exempt from our NGA regulatory oversight. The facilities located downstream of the Block 10 point, however, perform a transmission function and, thus, remain subject to our NGA oversight.

The West Cameron subsystem is different than the North High Island subsystem. It consists of a single line made up of approximately 33 miles of 16-inch and 1.75 miles of 12-inch contiguous pipeline. This subsystem displays the characteristics of a transmission line rather than a gathering facility. While the length and diameter of the facility is consistent with other lines found to be gathering, we are not bound by any one characteristic of a facility when determining its primary function. We find that length and diameter do not detract from a determination of transmission.

As to the location of wells along the line, most of them are clustered around the upstream terminus of the facility, the 1.75-mile, 12-inch line. There are other wells attached to the line via a few interconnects. Collecting gas at the terminus of the facility is characteristic of a transmission function, not necessarily a gathering one. The West Cameron subsystem resembles a transportation mainline that receives gas at one end for delivery at its other end to an interconnection with jurisdiction pipeline facilities. The introduction of additional gas via a few smaller branch lines does not take away from the fact that the facility performs a transmission function.

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[37] *See, e.g., EP Operating v. FERC*, 876 F.2d 45, 49 (5th Cir. 1989).

We have found that offshore facilities tend to operate at higher pressures than onshore facilities, regardless of whether their function is gathering or transmission, because of the generally higher wellhead pressures found offshore. The West Cameron operating pressure of 800 to 1,300 psig is not inconsistent with the operating pressures of other offshore systems, but would certainly be considered a transmission function if located onshore. However, since the pressure merely reflects the level of wellhead pressures, we find that the operating pressure, as well as the lack of compression do not, in this instance, prove the primary function of the facilities.

There are also no processing plants located on or connected to the Central Texas facilities. Again, we have previously discussed the impracticality of locating processing plants offshore [38] and concluded that, in the offshore context, the absence of processing plants is of little value in assessing the primary function of facilities.

The configuration of the West Cameron subsystem is that of a single line that connects production in the OCS to the onshore treating and processing facilities. As described previously, there is no central point of aggregation in this subsystem.

We find that the West Cameron subsystem's primary function is that of a transmission facility, not a gathering one. Therefore, if the subsystem is transferred to WGP, it will remain subject to our NGA regulatory oversight.

Protestors want the Commission to delay action here pending the outcome of the court proceedings in Sea Robin and suggest that we adopt the "feeder line test" rather than the primary function test to determine gathering. First, we will not hold this proceeding in abeyance pending the outcome of

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[38] *See, e.g., EP Operating v. FERC*, 876 F.2d 45, 49 (5th Cir. 1989).

the Sea Robin court case. The Commission currently has guidance from the court on how to proceed in distinguishing gathering from transmission on the OCS and we use that guidance in our determination here. Second, we have already addressed the "feeder line" issue in our order on Sea Robin. There, the Commission rejected arguments that, as a result of enactment of the OCSLA, we must adopt a "feeder line" definition of gathering. For the same reasons, we reach the same conclusion here.[39]

Indicated Shippers argue that our OCS Policy Statement established the expectation that, absent changed circumstances, existing offshore facilities are to retain their jurisdictional or nonjurisdictional status under the NGA. We disagree. The OCS Policy Statement is not intended to stand for permanently fixing the present jurisdictional status of offshore facilities. The OCS Policy Statement anticipates that facilities may be reclassified in response to changing circumstances. We find Transco's restructuring and the adaptation of our primary function test in the Sea Robin order on remand qualify as legitimate reasons to revisit the jurisdictional status of Transco's existing offshore facilities.

Indicated Shippers contend that a central factor in determining the primary function of the facilities at issue is the overall business purpose of the system. While we find it useful to look at the nature of the company that owns and operates facilities proposed to be spundown, that is but one of the factors to be considered. Here, Transco is an interstate gas transporter that has gone through restructuring to segregate its previously bundled services. We find that Transco's primary business is that of transportation. However, we also find that the nature of Transco's business, in and of itself, does not disqualify certain of the facilities at issue from a determination of gathering. The Commission, in its primary

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[39] *See* 92 FERC 61,072 at 61,294 (2000).

function analysis, does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply in all situations.

Transco states that Koch Gateway Pipeline Corporation (now Gulf South Pipeline Company, LP) is a joint owner of certain segments of the North High Island subsystem. To the extent that Gulf South co-owns with Transco facilities we have found to be nonjurisdictional, and currently functionalizes its interests in the facilities as transmission, Gulf South's facilities will need to be refunctionalized as gathering for rate and accounting purposes in their next NGA section 4 rate proceeding.[40]

KeySpan wants the Commission to find that Transco's offshore Mobile Bay facilities are also nonjurisdictional. Since the jurisdictional status of those facilities is not before us in this Docket, KeySpan's request is denied.

C. Environmental

Finally, we conclude that approval of the proposed abandonment will not constitute a major federal action significantly affecting the quality of the environment.

At a hearing held on July 25, 2001, the Commission on its own motion received and made a part of the record in these proceedings all evidence submitted, including the applications and petitions and exhibits supporting the sought authorizations, and after consideration of the record,

The Commission orders:

(A) In Docket No. CP01-103-000, Transco is granted permission and approval under NGA section 7(b) to abandon by sale to WGP, its interests in the North High Island/West Cameron facilities, as described more fully in this order.

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[40] *See CNG Transmission Corp.*, 67 FERC 61,330, at 62,178 (1994); Southern Natural Gas Company, 79 FERC 61,076 at 61,380 (1997); and *Natural Gas Pipeline Company of America*, 95 FERC 61,317 (2001).

(B) In Docket No. CP01-104-000, the Commission declares that upon acquisition by WGP, only the North High Island subsystem facilities located at or upstream of the North High Island Block 10 interconnect will be deemed gathering facilities exempt from the Commission's jurisdiction under the NGA. The remainder of the North High Island subsystem and all of the West Cameron subsystem are and will be transmission facilities subject to the Commission's NGA jurisdiction.

(C) Transco shall notify the Commission within 10 days of the date of abandonment of the facilities described above.

(D) Transco is authorized to abandon its Rate Schedule X-143 transportation service to ANR Pipeline Company, its Rate Schedule X-143 transportation service to Columbia Gulf, as well as the affected receipt points under its Part 284 agreement with Motiva Enterprises, LLC, provided they are services rendered through or are facilities that are part of those found to be gathering and will be abandoned to WGP.

(E) Consistent with Section 154.303(c)(2) of our regulations, Transco is directed to adjust its rates to remove the cost of the North High Island/West Cameron facilities in its current rate proceeding in Docket No. RP01-245- 000.

(F) The protests in this proceeding are denied.

By the Commission.

/s/ David P. Boergers

Secretary.

APPENDIX

Interventions and Protests in Docket No. CP01-103-000

Amerada Hess Corporation

Amoco Production Company and BP Energy Company

Anadarko Petroleum Corporation

Atlanta Gas Light Company and Virginia Natural Gas Company

Baltimore Gas and Electric Company

Burlington Resources Oil & Gas Company L.P.

Chevron U.S.A. Inc.

Consolidated Edison Company of New York [al]

Dynegy Marketing and Trade

El Paso Merchant Energy, L.P.

Exxon Mobil Corporation

Indicated Shippers [al]

KeySpan Delivery Companies [al]

Motiva Enterprises LLC

National Fuel Gas Distribution Corporation

Occidental Energy Marketing, Inc.

Piedmont Natural Gas Company, Inc.

Producer Coalition [al] [aal]

Shell Offshore Inc.

Sunoco Inc.[al]

[al] Protests the application.

[aal] Intervention out-of-time.

Superior Natural Gas Corporation and Walter Oil & Gas Corporation [a] [aa]

Texaco Natural Gas Inc.

Transco Municipal Group and the Municipal Gas Authority of Georgia

United Cities Gas Company, a division of Atmos Energy Corporation

Washington Gas Light Company [aa]

Williams Gas Processing-Gulf Coast Company, L.P.

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[a] Protests the application.

[aa] Intervention out-of-time.

APPENDIX

Interventions and Protests in Docket No. CP01-104-000

Amerada Hess Corporation

Amoco Production Company and BP Energy Company

Anadarko Petroleum Corporation

Atlanta Gas Light Company and Virginia Natural Gas Company

Burlington Resources Oil & Gas Company L.P.

Chevron U.S.A. Inc.

Conoco Inc.

Dynegy Marketing and Trade

El Paso Merchant Energy, L.P.

Exxon Mobil Corporation

Indicated Shippers [al]

KeySpan Delivery Companies [al]

Motiva Enterprises LLC

Occidental Energy Marketing, Inc.

Piedmont Natural Gas Company, Inc

Producer Coalition [al] [aal]

Shell Offshore Inc.

Sunoco Inc.[al]

Superior Natural Gas Corporation and Walter Oil & Gas Corporation [al] [aal]

[al] Protests the application.

[aal] Intervention out-of-time.

Texaco Natural Gas Inc.

Transco Municipal Group and the Municipal Gas Authority of Georgia [aaa]

Transcontinental Gas Pipe Line Corporation

United Cities Gas Company, a division of Atmos Energy Corporation

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[aaa] Comments

APPENDIX E

FEDERAL ENERGY REGULATORY COMMISSION
Commission Opinions, Orders and Notices

[Filed December 19, 2001]

Docket No. CP01-103-001
Docket No. CP01-104-001

Transcontinental Gas Pipe Line Corporation
Williams Gas Processing-Gulf Coast Company, L.P.

ORDER ON REHEARING

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

On August 24, 2001, Transcontinental Gas Pipe Line Corporation (Transco), filed a Request for Rehearing and Limited Stay of the Commission's Order Authorizing Abandonment and Determining Jurisdictional Status of Facilities issued in these dockets on July 25, 2001 (July 25 Order).[1] On August 24, 2001, the Producer Coalition[2] and Indicated Shippers[3] also filed Requests for Rehearing of the

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[1] Transcontinental Gas Pipe Line Corporation, et al., 96 FERC ¶ 61, 118 (2001) (July 25 Order).

[2] The Producer Coalition is an ad hoc group of natural gas producers, made up of Devon Energy Corporation, Dominion Exploration & Production, Inc. Forest Oil Corporation, The Houston Exploration Company, Newfield Exploration Company, and Ocean Energy, Inc. These companies have significant investment in oil and gas exploration and production projects in the Gulf of Mexico and are shippers and marketers of gas on numerous OCS pipelines.

[3] Indicated Shippers is an ad hoc group of companies having an interest in gas transported on the Transco system. In this case, the members of Indicated Shippers are: Amerada Hess Corporation, Amoco Production

July 25 Order. On September 10, 2001, Key Span Delivery Companies, Atlanta Gas Light Company and Virginia Natural Gas Company, Consolidated Edison Company of New York, Inc., Delmarva Power & Light Company, Philadelphia Gas Works, Public Service Electric and Gas Company and Washington Gas Light Company (KeySpan, *et al.*) submitted a response in partial opposition to Transco's requests for rehearing and limited stay.[4]

The July 25 Order approved a request by Transco to abandon facilities located largely offshore Texas and Louisiana, which are part of the North High Island/West Cameron Gathering System, by transfer to its gathering affiliate, Williams Gas Processing-Gulf Coast Company, L.P. (WGP). The July 25 Order also granted, in part, WGP's request that the Commission declare that the facilities it proposes to acquire from Transco will be, upon abandonment by transfer to WGP, gathering facilities and services, exempt from the Commission's jurisdiction under the NGA. The July 25 Order declared that upon acquisition by WGP, only the North High Island subsystem facilities located at or upstream of the North High Island Block 10 interconnect will be deemed gathering facilities exempt from the Commission's jurisdiction under the NGA. The remainder of the North High Island subsystem and all of the West Cameron subsystem are and will be transmission facilities subject to the Commission's NGA

Company, BP Energy Company, Burlington Resources Oil & Gas Company, L.P., Chevron U.S.A., Inc., Exxon Mobil Corporation, Occidental Energy Marketing, Inc., Shell Offshore Inc., and Texaco Natural Gas, Inc.

[4] Under the Commission's Rules of Practice and Procedure, there is nothing which forecloses KeySpan, et al. from responding to a request for stay. Under Rule 713(d) of those Rules, parties are normally precluded from responding to a request for rehearing. 18 CFR § 713(d). However, the Commission has determined that for good cause shown it will accept answers to rehearing.

jurisdiction.[5] The July 25 Order also directed Transco to adjust its rates to remove the cost of the facilities to be abandoned from its current rate proceeding in Docket No. RP01-245-000. This order denies or grants the requests for rehearing, as discussed below.[6] As noted in the July 25 Order, abandonment serves the public interest by permitting Transco to eliminate unnecessary expenses associated with facilities no longer needed to provide certificated services and enables WGP to make efficient use of these same facilities. Granting rehearing on the rate issue serves the public interest by assuring that the jurisdictional rates will continue to be just and reasonable while also preserving the integrity of the Commission's ratemaking policies.

I. Background

The July 25 Order permitted Transco to abandon, by transfer to its affiliate WGB, approximately 217 miles of 4-inch to 30-inch pipeline and other facilities located offshore, in the Galveston area, the High Island area, and the West Cameron area and onshore, in Cameron and Vermillion Parishes, Louisiana. In response to WGB's request, the July 25 Order sought to determine whether the facilities at issue were used primarily to transport gas, and thereby were subject to our jurisdiction under the NGA, or were used primarily to produce or gather gas, and thereby were exempt from our NGA jurisdiction.[7]

To determine the primary function of particular facilities, we consider the criteria articulated in Farmland Industries, Inc., (Farmland).[8] In Farmland, the Commission enumerated

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[5] 96 FERC at 61,461, Ordering paragraph (B).

[6] As the Commission is granting the request for rehearing on the rate issue which is the subject of the motion for stay, the motion is moot.

[7] Section 1(b) of the NGA states that "[t]he provisions of this Act ... shall not apply to . . . the production or gathering of natural gas."

[8] 23 FERC ¶ 61,063 (1983).

several physical and geographic factors to be considered in determining the primary function of a facility, including: (1) the facility's length and diameter, (2) the extension of the facility beyond the central point in the producing field, (3) the facility's geographic configuration, (4) the placement of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) operating pressures. In addition to these physical and geographic criteria, the Commission also considers the purpose, location, and operation of the facility, the general business activity of the owner of the facility, and whether the jurisdictional determination is consistent with the objectives of the NGA and Natural Gas Policy Act. We do not consider any single factor to be determinative and recognize that all factors do not necessarily apply in all situations.

The Commission has modified this primary function test for facilities located offshore. In 1990, in Amerada Hess Corporation (Amerada Hess),[9] we observed that as a result of "recent advances in engineering and available technology, offshore drilling operations continue to move further offshore and further from existing interstate pipeline interconnections."[10] Given the increasingly remote location of such offshore facilities, we found that offshore pipelines used to produce or gather gas may be larger and longer than onshore pipelines that perform the same function. Therefore, we found it appropriate to modify the application of the primary function test for offshore facilities, stating our intention to, "in effect, apply a sliding scale which will allow the use of gathering pipelines of increasing lengths and diameters."[11]

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[9] 52 FERC ¶ 61,268 (1990).

[10] *Id.*, at 61,988.

[11] *Id.*

In Sea Robin Pipeline Company (Sea Robin),[12] we reformulated the primary function test with respect to offshore facilities by (1) adopting an additional analytical element applicable to systems that contain a centralized aggregation point; (2) adjusting the weight to be afforded the "behind-the-plant" criterion so that the location of processing plants is not necessarily determinative and can be outweighed by other factors, and; (3) focusing primarily on physical factors.

The July 25 Order, in considering the primary function of the subject facilities, applied the Farmland test as modified in Amerada Hess and as reformulated in Sea Robin. As to the North High Island subsystem, the Commission found that: (1) the North High Island subsystem is configured in the shape similar to an inverted "Y" with the legs branching out from the High Island Block 10 central aggregation point; (2) consistent with Sea Robin, the legs upstream from the central points intersect with supply laterals throughout their length; (3) the length and diameter of the numerous pipelines are consistent with offshore gathering facilities; (5) the wellhead pressures are typical of a gathering function; (6) the absence of processing plants is of little value in assessing the primary function of facilities. Accordingly, the Commission concluded that the "primary function" of the facilities located at or upstream of North Padre Block 956 and Brazos Block 538 High Island Block 10 is gathering. As to the West Cameron subsystem, the Commission found that: (1) the West Cameron subsystem resembles a transportation mainline that receives gas at one end for delivery at the other, (2) operating pressure and lack of compression are of little value in assessing the primary function of facilities. Accordingly, the

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[12] 71 FERC ¶ 61,351 (1995), *order on reh'g*, 75 FERC ¶ 61,332 (1996), *remanded sub nom. Sea Robin v. FERC*, 127 F. 3d (Fifth Cir. 1997), *reh'g denied* (February 2, 1998), *order on remand*, 87 FERC ¶ 61,384 (1999), *order denying reh'g*, 92 FERC ¶ 61,072 (2000), *order denying stay*, 92 FERC ¶ 61,217 (2000).

Commission concluded that the "primary function" of the entire West Cameron subsystem is transmission.

II. Requests for rehearing

A. Whether the abandonment of the North High Island and West Cameron facilities is in the public interest.

1. Interests of shippers and the public

Indicated Shippers state that the Commission's finding that it has no discretion to withhold authorization for the transfer of facilities, when it believes that the primary function of the facilities is gathering, is not correct.[13] Indicated Shippers state that Section 7 of the NGA makes clear that the Commission's first duty is to protect the interests of shippers and the public, rather than to accommodate Transco's and WGP's corporate objectives.

Indicated Shippers point out that the abandonment would remove certain receipt points from those available to IT-feeder shippers that ship under Transco's tariff to FT shippers. Indicated Shippers state that the public interest is not served by the unilateral termination or degradation of existing firm services or by the abandonment of IT-feeder facilities to an un-regulated affiliate. Indicated Shippers state that producers and other shippers have relied for decades on the Commission's regulation of the entirety of Transco's offshore pipeline system. Indicated Shippers state that the public interest is not served by undermining these expectations by reversing decades of prior regulatory practice. Further, Indicated Shippers state that dividing this operationally integrated system into separate regulated and unregulated parts is not in the public interest because it could undermine the Commission's open access policies.

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[13] 96 FERC at 61,454.

Indicated Shippers state that Transco's abandonment application is grounded on the theory that, because Transco no longer provides bundled sales service, Transco's gathering services must be freed from the Commission's regulations in order to be able to compete with exempt gatherers. Indicated Shippers state that Transco has presented no evidence to support a finding that it has been unable to compete with non-NGA-regulated gathering companies. Indicated Shippers state that Transco is not concerned over whether it will be able to effectively compete in the marketplace with exempt gathers. Rather, Indicated Shippers state that Transco's real concern is over whether it will be able to take advantage of its existing control of the market in order to exact monopoly rents from shippers.

Commission response

We reaffirm our conclusion that the abandonment is required and in the public interest. As stated in the July 25 Order, where facilities are found to be used primarily in production or gathering, section 1(b) of the NGA directs that they be excluded from our NGA regulatory jurisdiction.[14] As further stated in the July 25 Order, the abandonment is consistent with unbundling policies of Order No. 636, and should, in the long run, promote competition.[15] Under the Outer Continental Shelf lands Act (OCSLA),[16] WGP will be prevented from discriminating against any shipper that seeks access to these facilities. Further, as noted in the July 25 Order, section 330.2 of our OCSLA regulations requires that WGP report the terms under which it provides service to its shippers.[17] The Commission will continue to employ its NGA authority to ensure that Transco's jurisdictional rates remain

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[14] 96 FERC at 61,455.

[15] 96 FERC at 61,455.

[16] 43 U.S.C. 1301-1356.

[17] 96 FERC at 61, 455.

just and reasonable. And, Transco's existing tariff standards prevent it from acting in a discriminatory manner.[18] WGP has agreed to continue to serve Transco's existing customers following the facilities' transfer. This should avoid any abrupt disruption to Transco's customers' expectations.

Independent entities engaged in different aspects of gas development, production, gathering, transporting, and delivery to end users are able to negotiate and rely on contractual capacity and scheduling commitments to guarantee the efficient movement of gas. Because we expect WGP, like all other offshore gatherers, will prove able to enter into service agreements with Transco, and any other transmission pipelines it may rely on, to take timely deliveries of its anticipated gas volumes, we see no need for Transco to retain ownership of its upstream gathering facilities to ensure the orderly flow of gas into its downstream transmission mainlines.

2. Effect on cost of moving gas to shore

Indicated Shippers complain that the July 25 Order transforms a single IT-feeder rate into rate-stacked charges for WGP's gathering and Transco's transmission services. Indicated Shippers state that without the constraint of rate regulation under the NGA, WGP will be able to charge shippers whatever the market will bear. Indicated Shippers state that there are no interconnections with other pipelines at the point at which the Commission finds that gathering ends and transmission begins, so shippers using the gathering facilities have no choice but to utilize Transco's remaining downstream IT-feeder transmission facilities to access Transco's mainline. Indicated Shippers state that it is not enough to say that the procedural safeguards of the OCSLA will adequately protect shippers from the market power of Transco and WGP.

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[18] 96 FERC at 61,455.

Commission response

Prior to abandonment, shippers are effectively paying Transco a transportation rate that includes gathering. That gathering service will be unbundled and provided by WGP. WGP's acquisition of Transco's facilities will necessarily subject shippers on these facilities to both a gathering and a transportation charge, where before such shippers were subject to a single Transco transportation rate. The Commission acknowledges that after the transfer of the facilities, shippers may pay a higher combined gathering fee and transportation charge to move gas between specific receipt and delivery points than the rate they now pay for bundled gathering and transportation service between the same points. However, this is neither inequitable nor an unwarranted rate stacking. As discussed in Order No. 636, it is appropriate to segregate and charge separate rates for separate services, rather than continue to compel shippers to pay a bundled charge for several distinct services.

The Commission will continue to employ its NGA authority to ensure that Transco's rates remain just and reasonable. Regarding WGP's facilities, although no State agency has authority, these facilities remain subject to federal oversight under the OCSLA. Though the OCSLA does not provide for rate regulation equivalent to that of the NGA, shippers are assured open and nondiscriminatory access to WGP's facilities. Onshore, and in state waters offshore, shippers on NGA-exempt facilities can appeal to state authorities to monitor WGP's operations. In the event a shipper believes either Transco or WGP violates its statutory obligations under the OCSLA, the Commission encourages that shipper to submit a complaint to the Commission describing the alleged violation.[19]

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[19] 18 CFR § 385.206 (2001).

B. Challenges to the primary function test

1. Should the Commission apply the OCSLA "feeder line" test instead.

Producer Coalition states that because of the close relationship between the OCSLA, the principal federal statute governing the OCS, and the NGA, the Commission should accord significant weight to legislative intent in formulating the jurisdictional test for OCS pipelines. Producer Coalition states that Congress has addressed the nature of gathering operations on the OCS in the 1978 OCSLA Amendments.[20] Producer Coalition states that, throughout the consideration of OCS pipeline issues, Congress equated "gathering" lines with "feeder" lines and concluded that such lines end where gas is "first separated, dehydrated or otherwise processed" on an OCS platform.[21] Producer Coalition states that the Commission erred in failing to accord the definition of gathering from the OCSLA Amendments of 1978 significant weight in its jurisdictional test. Producer Coalition states that the North High Island facilities are properly classified as jurisdictional transportation systems under the "feeder line" test.

Commission response

The Commission does not consider Congress' discussions of proposals to modify the OCSLA as guidance for jurisdictional distinctions under the NGA. The separate statutes, although complementary, have distinctly different scopes. The OCSLA applies to the full range of gas exploration, development, production, gathering, and transportation activities.[22] This is a broader regulatory sweep than the NGA which explicitly exempts facilities used for production, gathering, local distribution, and certain in-state transpor-

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[20] 43 U.S.C. 1301-1356.

[21] 43 U.S.C. § 1334(f)(2).

[22] 43 U.S.C. 1331(q).

tation. It would be inappropriate to rely on definitions and terms of art indigenous to one statute to interpret and enforce the other. Accordingly, the Commission rejects the Producer Coalition's effort to use legislative history associated with the 1978 amendment to the OCSLA as a foundation to argue for a new NGA primary function test.

2. Must Transco demonstrate changed circumstances

The July 25 Order stated that "a pipeline's functionalization of facilities for rate and accounting purposes does not determine the function of the facilities for purposes of jurisdiction under section 1(b) of the NGA. How pipelines historically functionalized their facilities for rate and accounting purposes does not prevent the Commission from applying the primary function test to determine the current jurisdictional status of the facilities."[23] In addition, the Commission also stated that it found "no cause to disallow Transco the right to claim its facilities perform a gathering function, when in the past it may have advocated the facilities function as transmission."[24]

Indicated Shippers state that while historical functionalization alone may not be determinative, the prior treatment of the facilities by both Transco and the Commission should be given presumptive effect in the absence of a showing of changed circumstances. Indicated Shippers state that given Transco's prior arguments to the Commission that the facilities were transmission, Transco should be estopped from now arguing that they are gathering.

Indicated Shippers state that Transco has failed to show a change in circumstance that would demonstrate that the subject facilities are now gathering. Indicated Shippers state that

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[23] July 25 Order at 61,455, citing *Southern Natural Gas Company, et. al.*, 79 FERC ¶ 61,076 at 61,379 (1997).

[24] *Id.*

the Commission offers no reasoned explanation why restructuring served to change the function of Transco's facilities, particularly given that the Commission's prior findings that the facilities are properly treated as transmission was made in conjunction with Transco's restructuring. Indicated Shippers state that Transco itself previously argued that restructuring served to reinforce the fact that all of its pipeline facilities provide a transmission function.

Indicated Shippers state that the Commission's decision here to change the pre-existing functionalization of certified facilities in the shallow waters of the OCS is in direct conflict with the OCS Policy Statement that indicates that the Commission would preserve the existing status of interstate pipeline facilities in the shallow water of the OCS.

Commission response

The OCS Policy Statement was explicit that "existing interstate pipelines and gathering facilities would retain their status barring some change in circumstances."[25] Nevertheless, the OCS Policy Statement must be read in light of the subsequent opinion in Sea Robin v. FERC, which determined that nonphysical factors such as ownership and prior certification are considerations secondary to physical factors.[26] In any event, the OCS Policy Statement anticipates that facilities may be reclassified in response to changing circumstances. The July 25 Order accepted Transco's claim that reclassification is merited as a response to Order No. 636. As the July 25 Order noted, after Order No. 636 many interstate pipeline companies found portions of their system's facilities

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[25] Gas Pipeline Facilities and Services on the Outer Continental Shelf—Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act, 74 FERC ¶ 61,222 at 61,757 (1996), *order dismissing reh'g*, 75 FERC ¶ 61,291 (1996) (OCS Policy Statement).

[26] 123 F.3d at 371.

were no longer required in order to provide certain certificated services. Where we found such facilities were employed to gather gas supplies needed to ensure a pipeline's capability to fulfill merchant sales obligations, a function that is no longer offered, we permitted pipelines to abandon such facilities.[27]

Second, Order No. 636 aside, a pipeline company can submit an abandonment application at any time, and the Commission will consider the reasons presented for requesting a review of the company's facilities' classification. We have acknowledged that the facilities were constructed, owned, and operated by Transco, historically an NGA-regulated interstate transportation provider. Nevertheless, we found that changed circumstances, principally Transco's reorganization in response to Order No. 636, tempered this indicator that the facilities were dedicated to interstate transportation.

3. Does the Central point of aggregation factor create a single factor test

As stated earlier, in Sea Robin, the Commission reformulated the modified primary function test adding a new "centralized aggregation point" factor for determining the jurisdiction of facilities on the OCS.

In Sea Robin the Commission found that gathering ends and transmission begins at the point where two or more segments of an OCS pipeline join for the last time and a single line moves natural gas towards shore.[28] The Commission refers to this as the "centralized collection point," or "central aggregation point," which is the point at which the gas collection/aggregation process on an OCS interstate pipeline ends.

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[27] 96 FERC at 61,454 (footnote omitted).

[28] *Sea Robin*, 87 FERC at 62,430-431.

Indicated Shippers complain that the Commission's analysis in Sea Robin is inherently flawed. Indicated Shippers state that this new test permits the Commission to find a point on a pipeline where the largest diameter pipeline on the system begins or where all upstream lines converge, and to designate that point as the demarcation point where gathering ends and transportation begins. Indicated Shippers state that this test would essentially eliminate any evaluation of the physical, geographical, and operational factors traditionally considered by the Commission in distinguishing gathering from transportation. Indicated Shippers state that in place of the primary function test, Sea Robin essentially establishes the very type of bright line test for which the Commission was admonished by the Fifth Circuit.[29] Indicated Shippers state that under this test the Commission would look for the central point on a pipeline system without reference to the nature of the upstream facilities and their relationships with producers' wells and other facilities.

Producer Coalition makes a related argument that because three of the factors contained in the modified primary function test produce three mutually exclusive jurisdictional results, the Commission, by necessity, must select one factor to predominate in order to reach a jurisdictional determination. Producer Coalition state that if the Commission gives principal emphasis to the "behind the plant" location of facil ities, all OCS facilities will be declared non-jurisdictional, because all processing plants downstream of OCS pipelines are located onshore.[30] Alternatively, Producer Coalition state

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[29] Citing, *EP Operating Co. v. FERC*, 876 F.2d 46 (5th Cir. 1989).

[30] Because of this fact, Producer Coalition state that the Commission has effectively disregarded the behind-the-plant factor in determining the jurisdictional status of OCS facilities. *Sea Robin II*, 87 FERC 62,428; *Enron Gulf Coast Gathering*, 95 FERC ¶ 61,318; Trunkline Gas *Company, et al.*, 95 FERC ¶ 61,337 (2001); and *Seahawk Transmission Co.*, 95 FERC ¶ 61,342 (2001).

that if the Commission gives principal emphasis to length and diameter of the pipeline, most major OCS systems will be found jurisdictional. Third, Producer Coalition state that if the Commission relies on the "central point of aggregation factor," the great bulk of OCS pipelines will be found non-jurisdictional except for the lines that run from the last major intersection offshore to the onshore terminus of a system. Producer Coalition state that while the other factors contained in the modified primary function test, i.e., (i) location of wells along all or part of the facility; (ii) geographic configuration; (iii) line pressure; and even (iv) the nature of the company that owns and operates the facilities-can be interpreted in a manner to support each of the above jurisdictional results, the results themselves cannot be reconciled with each other. Producer Coalition reason that use of the modified primary function test necessarily involves the selection of one dominant factor, which is determinative of the outcome. Producer Coalition state that that factor, however, becomes the "bright line" standard, which runs afoul of the Fifth Circuit's conception of reasoned decision-making.

Commission response

The above line of arguments largely represents a collateral attack on the Commission's reasoning in Sea Robin and is rejected for that reason. In addition, Indicated Shippers and Producer Coalition misread the July 25 Order. For both the Sea Robin and Transco systems, all relevant criteria of the Farmland test, as modified with respect to offshore facilities, were afforded appropriate consideration. In this case, not all factors pointed to the same primary function—a result commonly encountered in applying our multi-factor test—thereby compelling the Commission to weigh each factor to balance the conflict presented. In the July 25 Order, in addition to the location of points of aggregation, the Commission found that the configuration of the facilities, the lack of compression, and the size and scope of the pipelines also demonstrated a

gathering function.[31] The Commission found that the absence of processing plants was of little value in guiding the determination on the primary function of the facilities.[32] Although the Commission did identify a single, central point of aggregation, the primary function finding did not rest solely on this feature (or on any other single factor) of the system. The claim that under our primary function test, the Commission is compelled to select a single factor and let it dominate to determine jurisdiction, is rejected.

C. Challenges to the application of the primary function test

1. Configuration

Indicated Shippers state that even if the Sea Robin "central point of aggregation" analysis is lawful, the Commission's selection of North High Island Block 10 as the demarcation points is inappropriate. Indicated Shippers states that Map 5W-B reflects the many smaller pipeline facilities forming "Y" configurations along the North High Island system and going out to the actual wells. Indicated Shippers state that the Commission should not ignore the configuration of these upstream facilities, which aggregate gas and provide the gathering function on the system. Indicated Shippers state that the facilities downstream of these smaller lines should be treated as transmission.

Indicated Shippers state that the location of wells, for the most part, appear to be remote from Transco's facilities. Indicated Shippers state that production is brought to Transco in smaller gathering lines. Accordingly Indicated Shippers state that, the gathering function is provided by other parties, whose facilities bring gas to Transco's trunk lines. For example, Indicated Shippers state that the map of the North

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[31] 96 FERC at 61,459.

[32] *Id.*

High Island facilities shows numerous wells, purportedly served by Transco's facilities, that are located off Transco's lines.[33] Indicated Shippers state that Map 5W-B clearly illustrates the numerous small-diameter lines that actually interconnect the wells with the central line. Although Indicated Shippers agree with the Commission's finding that this alone would not disqualify the lines from a finding of gathering this is yet another piece of evidence that supports a finding that the subject facilities are transmission and not gathering.

Commission response

In Sea Robin, the Commission took note of the court's observation that, while the task in a case may be difficult, the Commission must squarely address the fact that the demarcation point between gathering and transmission may be located at a point internal to the overall system.[34] The Commission explained that the most logical demarcation point may be the "coincidence of several smaller lines at a centralized location where the gas carried is delivered into a single, larger-diameter line for further delivery to market."[35] As noted by Indicated Shippers, for every offshore system, there are multiple Y junctions, from the first offshore interconnection point to the junction at which the line furthest seaward is tied back in. The task then is to determine which of these several Y interconnects may merit the distinction of being the point of aggregation at which gathering ceases and transmission starts. A primary function review of the traits of all potential legs and trunks is required.

The 24-inch Line C interconnects in High Island Block 10 with a 12 mile 16- inch line and with three short four-inch

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[33] *See* Abandonment Application, Exhibit Z (map 5W-B).

[34] 92 FERC ¶ 61,072 at 61,290.

[35] 92 FERC ¶ 61,072 at 61,290.

lines. The Commission found that while Line C retains its 24-inch diameter downstream of this point, it nevertheless serves as the central point of aggregation for the subsystem, where all the gas gathered upstream is delivered to a single point for transportation onshore. Although the North High Island Block 10 point does not exhibit as strong an indication of a marked physical change in facilities as was the case in Sea Robin,[36] the Commission found that it functions as an aggregation point that may be interpreted as indicating a demarcation of gathering and transmission functions. The configuration of this point implied a transition from gathering to transmission, a finding that was accepted only after applying the multi-factor methodology to the rest of Transco's facilities.

2. Size

The North High Island subsystem consists of approximately 174 miles of 4 to 30-inch pipeline. The majority of the facilities are relatively small, with the lines ranging from 4 to 24-inches in diameter. Upstream from the Block 10 point, the length and diameter of the numerous pipelines are short and small compared to the facilities found to be gathering in Sea Robin. The West Cameron subsystem is different than the North High Island subsystem. It consists of a single line made up of approximately 33 miles of 16-inch and 1.75 miles of 12-inch contiguous pipeline.

Indicated Shippers state that although *EP Operating Co. v. FERC*,[37] stands for the proposition that the Commission should not improperly overemphasize the length of the pipeline in its primary function analysis, length is still an

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[36] In Sea Robin, the central point of aggregation was a manned offshore platform at which two smaller lines merged into a single larger line, significant compression facilities were located on the platform, and the platform was situated as a point geographically central to the Sea Robin system.

[37] 876 F.2d 46 (5th Cir. 1989).

important factor to consider. Indicated Shippers complain that in the July 25 Order, the Commission failed to take into account the overall length of the pipeline in its determination that the facilities upstream from the Block 10 are gathering. Indicated Shippers state that Seahawk Shoreline System,[38] illustrates that 12-24 inch pipeline facilities can qualify as transmission facilities.

Commission response

The Commission has adopted no bright line test regarding the size of jurisdictional offshore facilities. Although size generally correlates with function, large offshore facilities need not be summarily disqualified from gathering status if the other characteristics of the facilities are indicative of a gathering function.[39] Facilities as large as typical transmission lines may nevertheless be found to be gathering when other primary function factors demonstrate characteristics consistent with gathering.[40] Likewise following review of the Farmland factors, we have also determined that systems smaller than these perform a transmission function.[41]

In this case, the Commission applied the several factors of the primary function test. Not all factors were found to be

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[38] 93 FERC ¶ 61,097 (2000) *order denying reh'g*, 95 FERC ¶ 61,342 (2000).

[39] *See Amerada Hess*, 52 FERC P61,268 (1990) (discussion of and response to EP Operating v. FERC, 876 F.2d 45 (5th Cir. 1989). *See also Viosca Knoll*, (finding a relatively long, large line gathering).

[40] Offshore, a 28-inch diameter line has been found to be gathering. Exxon Corporation, 45 FERC P61,436 (1988). However, that diameter was found in 9.5, 7.9, and 6.1 -mile segments of a 36.7-mile system that was producer owned, carried only sour gas, included no compression, and performed production as well as gathering.

[41] *See, e.g., Louisiana Intrastate Gas Corporation*, 69 FERC ¶ 61,022 (1994) (a system composed of 1.34 miles of 4-inch diameter pipe and 21.94 miles of 16-inch diameter pipe that serves to carry gas from OCS production areas to shore).

relevant or uniform, and certain factors exhibited more value or weight than others. The subject lines' large diameters, a usual indicator of a transmission function, was outweighed by other characteristics denoting a gathering function. The Commission affirms the prior determination that on balance the factors indicate that the facilities to be abandoned perform primarily a nonjurisdictional gathering function.

3. Pressure

Indicated Shippers argue that the pressure ranges of the North High Island facilities located at or upstream of the North High Island Block 10 interconnect, between 800 and 1300 psig, also indicate a transmission function. Indicated Shippers state that these pressure ranges reflect neither the very high nor low operating pressures frequently seen in gathering lines. Indicated Shippers state that the absence of compression does not undermine this view: it simply reflects that compression was unnecessary, and sheds no light on whether the facilities are gathering or transmission.

Commission response

There is no compression located along the North High Island facilities located at or upstream of the North High Island Block 10 interconnect, which means that the systems operating pressures are a function of the wellhead pressures. The wellhead pressures act to push the gas through the facilities, which is typical of a gathering function, unlike compression, which is typical of a transmission function. While these pressures would indicate a transportation function onshore, they must be viewed, here, in the offshore context. These pressures are consistent with the nature of offshore production and comparable to operating pressures of other offshore facilities found to be gathering.[42] Accordingly,

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[42] *See, e.g., Northern Natural Gas Company*, 93 FERC ¶ 61,101 (2000) (offshore facilities operating at pressures between 1,050 and 1,200 psig found gathering) and Tarpon Transmission Company, 78 FERC ¶ 61,278

the Commission affirms the prior determination that the pressure factors indicate that the facilities to be abandoned located at or upstream of the North High Island Block 10 interconnect, perform primarily a nonjurisdictional gathering function.

4. Shallow water factor

Indicated Shippers point out that the OCS Policy Statement[43] provides that new facilities located in water depths of 200 meters or greater will be presumed to be gathering.[44] Indicated Shippers state that the Commission failed to give any weight to the fact that the North High Island facilities located at or upstream of the North High Island Block 10 interconnect do not extend to the deep waters of the OCS.

Commission response

As noted in the July 25 Order, the OCS Policy Statement added a new factor to the primary function test concerning facilities that are designed to collect gas produced in water depths of 200 meters or more.[45] The OCS Policy Statement creates a presumption that these deep water facilities are gathering facilities up to the point or points of interconnection with the interstate pipeline grid. There is no corollary rebuttable presumption that facilities located in shallow water are transmission. Rather, the Commission considers a facility's location in shallow water as one among several criteria

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(1997) (offshore facilities operating at pressures between 1,100 and 1,250 psig found gathering).

[43] Gas Pipeline Facilities and Services on the Outer Continental Shelf - Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act, 74 FERC ¶ 61,222 (1996), *order dismissing reh'g*, 75 FERC ¶ 61,291 (1996) (Policy Statement).

[44] *Id.* at 61,757.

[45] 96 FERC at 61,456.

in assessing the primary function. While almost all NGA-regulated pipe is located in shallow water, approximately half of all the facilities found in shallow water are NGA-exempt production and gathering facilities. Accordingly, a particular facility's placement in shallow water, standing alone, is a poor predictor of that facility's primary function (in contrast, in deep water, almost all facilities are engaged in production or gathering). The shallow water location must be viewed in the context of a facility's other characteristics in order to reach any meaningful assessment of its primary function. In this case, the shallow water location of the subject facilities was not as substantial a factor as the facilities' other characteristics.

5. Integrated Pipeline System

Indicated Shippers believe that the nature of Transco's integrated pipeline system provides strong evidence in support that the primary function of Transco's entire North High Island System continues to be transmission. Indicated Shippers state that there is no reasoned basis to conclude that the primary function of one portion of an integrated system is gathering, and the other is transmission.

Commission response

In Sea Robin the Commission rejected the position that the Commission should consider an entire pipeline system gathering if the "integrated" nature of the system, as a whole, is designed to transport gas from production areas to onshore locations. The Commission explained that such a finding would violate the Commission's responsibility to draw jurisdictional lines, even when the end of gathering is not easily located, as for example, when it occurs at a point internal to an overall system.[46] For the same reason, we reject the

[46] 92 FERC ¶ 61,072 at 61,290.

contention that the integrated nature of Transco's system precludes us from finding that a portion of the system is gathering.

6. Historical certification and business purpose

Indicated Shippers argue that the Commission erred in its conclusion that the historical certification of Transco's facilities is not relevant to the current primary function of the facilities and in failing to give due weight to the business purpose of the subject facilities. Indicated Shippers are in agreement with the Commission in that the "business purpose" of the subject facilities is only one factor to consider in determining the primary function of the facilities. However, Indicated Shippers argue that because the business purpose of the pipeline provides strong evidence of a pipeline's functionalization, it should be considered a central factor. Indicated Shippers argue that where the owner of pipeline facilities is in the business of transportation for hire, and has historically operated the pipeline as an integrated interstate pipeline system, the primary function of the pipeline is most likely transmission.

Commission response

In the past, when a pipeline applied for a certificate to construct facilities, the Commission did not inquire into the pipeline's prospective use of the facilities before issuing the certificate. Consequently, many facilities that actually may perform a gathering function originally were constructed under NGA section 7 certificates. Therefore, until the Commission actually scrutinizes the facilities under the primary function test, the actual jurisdictional status of the facilities cannot be definitively determined.[47]

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[47] *See, CNG Transmission Corporation*, 67 FERC P61,330, at 62,177 (1994).

The offshore facilities at issue here were installed under NGA certificate authority and have continued to be functionalized by Transco as transmission for many years. Nonetheless, in making jurisdictional determinations on the OCS, and indeed, onshore as well, the physical characteristics of the particular pipeline systems are the more significant factors, and each determination must be made on the basis of its own specific fact situation.[48] Here, such non-physical aspects are not compelling enough to overcome the overwhelming physical evidence

D. Challenge to the rate adjustment

Transco seeks rehearing of the requirement that it adjust its rates to remove the cost of the facilities to be abandoned from its current rate proceeding in Docket No. RP01-245-000.[49] Pending the Commission's action on rehearing, Transco also requests that the Commission grant a limited stay of the July 25 Order's rate adjustment requirement. As discussed below, the request for rehearing on this issue is granted. Therefore, the motion for stay is moot.

Transco states that having now received the Commission's Order granting abandonment and transfer, Transco and WGP must make the modifications necessary to permit operation of these facilities on a stand-alone basis, and must negotiate contracts to govern post-spin down services on these facilities. Transco states that for a variety of reasons, it does not believe that such transfer will close until well into 2002, at the earliest.

Transco states that the July 25 Order contains no findings under either NGA Sections 4 or 5 that the subject facilities will not be in service through the test period in Docket No. RP01-245-000, or that Transco's rates to be effective

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[48] *Sea Robin*, 127 F.3d 365 at 371.

[49] 96 FERC at 61,461, Ordering paragraph E.

September 1, 2001, will be unjust or reasonable. Transco states that Section 5(a) requires such findings before the Commission may lawfully adjust a pipeline's rates.[50] Transco states that to require Transco to remove the cost of these facilities from jurisdictional rates while such facilities continue to render jurisdictional service would be unlawful under these NGA sections, which require that a pipeline be afforded an opportunity to earn a fair return on its investment in jurisdictional facilities and to recoup its costs in rendering jurisdictional service.[51]

KeySpan, et al., argue that the timing of the transfer is a matter within the control of the contracting parties and Transco's customers should not be required to continue to pay for facilities that are not necessary to provide their jurisdictional services simply because the transfer has not occurred as expeditiously as Transco had planned.

Commission response

In its application in Docket No. CP01-103-000, Transco proposed to transfer the subject facilities to WGP effective on the last business day of the calendar month following the calendar month of the issuance of [the July 25 Order], or at a mutually agreeable date thereafter. Thus, the transfer was expected to occur as early as August 31, 2001. However, the transfer did not take place at that time. The test period in Transco's current general rate proceeding in Docket No. RP01-245-000 expired on August 31, 2001, and the proposed rates became effective on September 1, 2001.[52] The subject

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[50] 15 U.S.C. 717d(a). Transco cites *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1578-79 (D.C. Cir. 1993).

[51] Transco cites *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

[52] On March 1, 2001, in Docket No. RP01-245-000, Transco filed revised tariff sheets to reflect a general NGA section 4 rate increase. The Commission exercised its discretion to accept and suspend the rates to take effect on September 1, 2001, subject to conditions and subject to

facilities continue to be owned by Transco, and are being operated under color of a certificate issued by the Commission. The Commission's regulations only require removal of the costs of facilities that will not be in service as of the end of the test period.[53] Hence, the Commission's regulations

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refund and the outcome of a hearing. Transcontinental Gas Pipe Line Corporation, 94 FERC ¶ 61,360 (2001). On August 31, 2001, in Docket No. RP01-245-003, Transco filed a motion to place the suspended tariff sheets into effect on September 1, 2001. Among other things, Transco stated that it had eliminated the costs associated with facilities not in service as of August 31, 2001, but had not reflected any adjustments in the compliance rates for the subject facilities for which abandonment was granted. By order issued September 27, 2001, the Commission accepted the revised tariff sheets to be effective September 1, 2001, subject to refund, the outcome of the hearing established in Docket No. RP01-245-000, and the certificate proceedings in Docket Nos. CP01-34-000, CP01-103-000 and CP01-368-000. *Transcontinental Gas Pipe Line Corporation*, 96 FERC ¶ 61,345 (2001) (September 27 Order). The Commission also directed Transco to file revised tariff sheets, within 15 days of the date of issuance of that order, reflecting the removal of the costs of the facilities abandoned in the certificate proceedings.

On October 9, 2001, in Docket No. RP01-245-005, Transco filed a Request For Clarification Or, In The Alternative, For Rehearing, of the September 27 Order (October 9 Request). Transco also requested a limited stay that sought an extension of time within which to comply with the September 27 Order. The motion states that because Transco's books and records would have to be reconstructed in order to calculate the costs required by the Commission's Order, compliance is not possible within the 15-day deadline. On November 6, 2001, an extension of time was granted until 30 days after the Commission acts on Transco's October 9 Request. The Commission order in Docket No. RP01-245-005 is being issued concurrently with the instant order.

[53] Section 154.303(c)(2) of the Commission's regulations states:

> When a pipeline files a motion to place the rates into effect, the filing must be revised to exclude the costs associated with any facilities that will not be in service as of the end of the test period ... At the end of the test period, the pipeline must remove from its rates costs associated with any facility that is not in service . . .

and ratemaking policies did not require that Transco remove the cost of those facilities and costs from the rates that went into effect on September 1, 2001, subject to refund. Accordingly, rehearing is granted. The order in Docket No. RP01-245-005, issued concurrently with the instant order, discusses the effect of the refunctionalization of the subject facilities to gathering on Transco's rates.

Nonetheless, the Commission's finding in the July 25 Order that Transco must remove the costs of the facilities that it will abandon from its prospective rates was grounded on the sound ratemaking principal that just and reasonable jurisdictional rates cannot be based on the costs of facilities not owned by the pipeline, not in service, and not needed to provide service to jurisdictional customers. Thus, it would seem unjust and unreasonable for Transco to continue to charge rates designed to afford Transco the opportunity to recover the cost of and earn a fair return on an investment in the subject facilities at such time that it no longer owns them and no longer uses them to provide jurisdictional service. Accordingly, we shall direct Transco to show cause, within 30 days from the date of issuance of this order, why it should not be required to file revised tariff sheets and supporting workpapers containing replacement rates reflecting the removal of all costs associated with the abandoned facilities, 30 days prior to the effective date of the transfer of the subject facilities.

III. Request for clarification

Indicated Shippers ask that the point at which gathering ends and transmission begins be better identified than in the July 25 Order. Indicated Shippers state that simply identifying a particular platform is not sufficient because a more specific identification becomes critical for new interconnections to the platform. Indicated Shippers state that if Transco deems the interconnect to be upstream of the point of demarcation between gathering and transmission, the pipeline

and its affiliate could argue that a gathering fee must be paid for a very short haul of gas from one point on the platform to another. In order to avoid this sort of rate stacking, Indicated Shippers request that the Commission clarify that all of the facilities at the platform at which gathering ends are to be treated as transmission; and, only facilities upstream of the platform should be gathering. In this way Indicated Shippers state that, there will be no question that new interconnects at the platform will not bear a gathering charge for short hauls on the platform.

Commission response

The Commission clarifies that facilities upstream of the jurisdictional demarcation platform have been found to be gathering, and facilities downstream have been found to be transmission. However, the Commission denies the request to clarify that all of the facilities at the jurisdictional demarcation platform are to be treated as transmission. An OCS platform may be constructed to serve many functions, such as an aggregation point for numerous lines, and/or to provide separation, dehydration, and other production and transmission services. Basically, facilities on the platform involved with bringing gas to the platform are gathering and facilities involved in sending gas toward shore are transmission. Facilities that separate or dehydrate are also performing production and gathering functions. Although unusual in offshore situations, compression facilities would most likely be involved in transmission. New interconnections to the platform should be functionalized accordingly.

The Commission orders:

(A) The requests for rehearing are granted or denied as discussed in this order.

(B) Pursuant to section 5 of the Natural Gas Act, Transco is directed to show cause, within 30 days from the date of issuance of this order, why it should not be

required to file revised tariff sheets and supporting workpapers containing replacement rates reflecting the removal of all costs associated with the abandoned facilities, 30 days prior to the effective date of the transfer of the subject facilities.

(C) Within 15 days after WGP acquires the subject facilities deemed gathering, WGP must file an OCSLA Reporting Form and the conditions of service for each shipper served with respect to the acquired facilities (and the services rendered through those facilities) and continue to do so thereafter, in accordance with section 330.3 of the Commission's regulations.

By the Commission.

(SEAL)

Linwood A. Watson, Jr.,
Acting Secretary.

APPENDIX F

FEDERAL ENERGY REGULATORY COMMISSION
Commission Opinions, Orders and Notices

[Filed July 25, 2001]

Docket No. CP01-34-000
Docket No. CP01-32-000

Transcontinental Gas Pipe Line Corporation
Williams Gas Processing-Gulf Coast Company, L.P.

ORDER AUTHORIZING ABANDONMENT AND DETERMINING JURISDICTIONAL STATUS OF FACILITIES

Before Commissioners: Curt Hébert, Jr., Chairman; William L. Massey, Linda Breathitt, Pat Wood, III and Nora Mead Brownell.

On November 20, 2000, Transcontinental Gas Pipe Line Corporation (Transco) submitted an application in Docket No. CP01-34-000, pursuant to section 7(b) of the Natural Gas Act (NGA), seeking Commission approval to abandon facilities comprising portions of the North Padre Island Gathering System (North Padre System) and the Central Texas Gathering System (Central Texas System) located offshore Texas by transfer to its gathering affiliate, Williams Gas Processing- Gulf Coast Company, L.P. (WGP). On the same date, WGP submitted a petition in Docket No. CP01-32-000 requesting that the Commission declare that the facilities it proposes to acquire from Transco will be, upon abandonment by transfer to WGP, gathering facilities and services, exempt from the Commission's jurisdiction under the NGA.

For the reasons discussed below, we will approve Transco's requested abandonment and declare the facilities to be gathering.

I. Background and Proposal

The requested abandonment is part of an ongoing corporate-wide restructuring by The Williams Companies, Inc. (Williams), the corporate parent of Transco and WGP, to abandon and transfer (spindown) gathering facilities from Transco and the other Williams-affiliated interstate pipelines into nonjurisdictional gathering companies. The facilities under consideration in these dockets were part of a more comprehensive gathering spindown request filed by Transco and WGP in Docket Nos. CP96-206-000 and CP96-207-000.[1] Those applications were dismissed without prejudice to the applicants' filing another proposal addressing discrete portions of the facilities.[2] Transco states that it has reviewed its gathering facilities on a system-by-system basis under the Commission's primary function test in Sea Robin.[3] Transco states that this application represents its first proposal to spindown gathering facilities under the principles of Sea Robin.

Transco states that as a result of the proposed abandonment of these facilities, service provided by Transco under two Part 284 firm transportation agreements with Sun Company Inc. and Texaco Refining and Marketing, Inc. (converted from section 7(c) individually certificated services) must be partially abandoned and the seven affected source/receipt points

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[1] *Transcontinental Gas Pipe Line Corporation*, 76 FERC ¶ 61,317 (1996), order denying reh'g, 95 FERC ¶ 61,396 (2001).

[2] *Id.* at 62,543.

[3] *Sea Robin Pipeline Company*, 71 FERC ¶ 61,351 (1995), order on reh'g, 75 FERC ¶ 61,332 (1996), remanded *Sea Robin v. FERC*, 127 F. 3d 365 (5th Cir. 1997), reh'g denied (February 2, 1998), order on remand, 87 FERC ¶ 61,384 (1999), order denying reh'g, 92 FERC ¶ 61,072 (2000), order denying stay, 92 FERC ¶ 61,217 (2000) (Sea Robin).

from the corresponding FT Service Agreements must be deleted. In addition, Transco requests abandonment authorization for Rate Schedule X-66 to remove the points from the affected firm transportation contracts and to terminate the portion of such services from the receipt/source points affected by this application. Transco states that the primary term of Rate Schedule X-66 expired in 1993. Moreover Transco states that gas has not flowed under Rate Schedule X-66 since 1989; consequently, there is no longer a need for this service. Transco states that upon approval of this abandonment application, Transco will file the necessary conforming changes to its FERC Gas Tariff, such as the termination of Rate Schedule X-66 tariff sheets and removal of reference to the abandoned facilities in Transco's tariff.

Transco's proposes to transfer the subject facilities to WGP pursuant to the Transfer and Assignment Agreement dated February 19, 1996, as amended on December 29, 1997, at net book value at the time of closing, resulting in no gain or loss to Transco. Following a Commission order approving abandonment acceptable to Transco and WGP, Transco proposes to transfer the subject facilities to WGP effective on the last business day of the calendar month following the calendar month of the issuance of such order, or at a mutually agreeable date thereafter. Transco will notify the Commission within ten (10) business days of the transfer of the facilities. Transco states that if this abandonment is approved prior to Transco's next general section 4 rate case filing, then in accordance with Transco's rate settlement in Docket Nos. RP97-71-000, *et al.*, Transco will make a rate filing as necessary to reflect the spindown after Commission approval. Transco states that the depreciated net book value of these facilities is approximately $34,893,250 as of October 31, 2000.

Transco states that the application to abandon and transfer the North Padre and Central Texas gathering systems is

consistent with Williams' ongoing corporate restructuring, whereby the gathering facilities of Williams' interstate pipelines have been unbundled and spundown to companies focused on providing gathering services. Transco states that the spindown of gathering facilities by Williams' interstate pipelines, other than Transco, is largely complete. The Commission has approved those prior spindowns, finding that they will serve the public interest and are consistent with the Commission's industry restructuring and pro-competitive policies. Transco states that for the same reasons, the Commission should likewise approve the instant application.

Transco states that it has either notified or has caused the notification of the affected parties of its intent to terminate and abandon the affected services. Transco states that WGP is currently operating the subject facilities as Transco's agent and WGP plans to negotiate post-spindown service agreements with all shippers. Transco states that WGP will continue to operate the facilities in an open and nondiscriminatory manner. In that regard, while the spundown facilities will not be subject to the Commission's NGA jurisdiction, the facilities are subject to the Outer Continental Shelf Lands Act (OCSLA),[4] which mandates that all Outer Continental Shelf (OCS) pipelines provide "open and nondiscriminatory access" to their OCS facilities.[5]

In prior spindown cases, the Commission has required the pipeline to adopt tariff provisions ensuring that it will not provide any undue preference to affiliates. Transco states that Section 36 of the General Terms and Conditions of Transco's tariff already includes such provisions.

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[4] 43 U.S.C. § 1331, *et seq.*

[5] 43 U.S.C. § 1334 (f)(1)(A).

II. Description of facilities

Transco states that the North Padre facilities proposed to be abandoned include only offshore facilities which are located in the North Padre Island Area and the North Padre Island Area East Addition. The facilities comprising the North Padre system to be abandoned consist of 3.83 miles of 10-inch pipeline and 18.79 miles of 20-inch pipeline. Transco states that these facilities gather and move gas onto Transco's 24-inch lateral (which is not part of this application) and into the Padre Island Plant onshore in Brooks County, Texas.

Transco states that the Central Texas system consists of only offshore facilities located in the Galveston Area, Brazos Area, Brazos Area South Addition, Matagorda Island Area and Mustang Island Area East Addition. The pipeline facilities in the Central Texas system to be abandoned are:

4.96 miles of 6-inch pipeline

4.19 miles of 8-inch pipeline

3.77 miles of 10-inch pipeline

64.79 miles of 12-inch pipeline

11.56 miles of 16-inch pipeline

116.48 miles of 20-inch pipeline

23.42 miles of 24-inch pipeline

41.15 miles of 30-inch pipeline

Transco states that these facilities gather and move gas onto Transco's Block 538 Junction Platform and into Transco's 30- inch and 36-inch lines (which are not part of this application), where the gas is moved to the Markham Separation and Dehydration Plant located in Matagorda County, Texas. Transco states that certain segments of the Central Texas pipelines are jointly-owned facilities.

Transco states that the North Padre and Central Texas facilities proposed to be abandoned include a number of valves, meters and related appurtenant facilities located throughout the systems. Transco states that these related facilities constitute an integral part of the non-jurisdictional gathering function of the facilities sought to be abandoned and are also proposed to be abandoned and declared nonjurisdictional.

Transco states that most of the facilities comprising the North Padre and Central Texas systems are the subject of various NGA section 7 (c) certificates issued by the Commission. Transco states that at the time they were acquired or constructed, the North Padre and Central Texas facilities were used almost exclusively to deliver system supply gas to support bundled sales services. Transco states that under the historic structure, Transco did not have a need to precisely distinguish between jurisdictional transmission and exempt gathering facilities. Therefore, Transco states, the fact that many of the subject facilities were constructed pursuant to NGA certificates is not an indication of whether the facilities actually qualify for exempt gathering status under section 1(b) of the NGA. Transco states that in numerous orders, the Commission has acknowledged that the historical functionalization and certification of facilities was dictated by the nature of the prior bundled service structure and those historic classifications are not determinative of jurisdictional status under the primary function test.[6]

III. WGP's Petition for Declaratory Order

WGP states that both the North Padre and the Central Texas gathering systems should be found to function as

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[6] Transco cites *Cavallo Pipeline Co.*, 71 FERC ¶ 61,053 at 61,198 (1995); *CNG Transmission Corporation*, 68 FERC ¶ 61,104 at 61,578 (1994); *Natural Gas Pipeline Company of America*, 68 FERC ¶ 61,339 and 62,359 (1994).

gathering under the primary function test, including the Commission's reformulated factors in Sea Robin.

A. North Padre Island System

The North Padre facilities to be spundown consist of two small offshore legs that meet at a common point in the OCS where they both deliver gas into a Transco pipeline. As stated above, one leg consists of 3.83 miles of 10-inch pipeline that begins (on the upstream end) in North Padre Island Block 967 and ends at North Padre Island Block 956. The other leg consists of 18.79 miles of 20-inch pipeline that begins in East Addition Block A-42 and also ends at North Padre Island Block 956. WGP states that the gas collected is produced at various points offshore for ultimate delivery to Transco's onshore separation and dehydration facilities. The facilities consist of 22.62 miles pipelines: 3.83 miles of 10"pipe and 18.79 miles of 20" pipe.

WGP states that the North Padre facilities should be declared nonjurisdictional gathering facilities because: (1) the lengths of the two pipelines are short and the diameters are small; (2) numerous wells are located throughout the length of the lines; (3) the operating pressures are consistent with offshore gathering; (4) there are no compression or processing facilities on the system; (5) the system is configured in an inverted "Y," which is consistent with that found to be gathering in Sea Robin; and (6) the facilities do not extend beyond the system's central aggregation point.

WGP points out that there are three reformulated aspects of the primary function test articulated in Sea Robin: 1) The centralized aggregation point; 2) an adjustment in the weight afforded the behind the plant criterion; and 3) a primary focus on physical factors. WGP states that the centralized aggregation point is clearly the point where North Padre system ends—North Padre Island Block 956. WGP states that, just as in Sea Robin's remand order, this is the point where the two

legs converge into a single line (24-inch) that transports the gas to shore. WGP states that the gas gathered in the North Padre gathering system is neither processed nor pipeline quality until it reaches the separation and dehydration plants onshore, so to the extent the Commission considers the behind the plant factor, it weighs in favor of a gathering determination.

B. Central Texas Gathering System

The Central Texas gathering system is located offshore Texas in OCS waters and consists primarily of two sets of pipelines that meet at a common point at Brazos Area Block 538, where the gas then enters a set of trunk lines for transportation to onshore processing facilities. In addition, the system includes two small stub laterals that extend off of the system's trunklines.[7] At Brazos Area Block 538 where the two legs converge, there is a platform that contains valve manifolds and mechanical "pig" launchers and receivers. The facilities consist of 270.32 miles of 2-inch to 30-inch diameter pipelines.

WGP states that the Central Texas facilities should also be declared nonjurisdictional gathering facilities because: (1) the length and diameter of the pipelines are relatively small; (2) numerous wells are located throughout the system; (3) the operating pressures are consistent with offshore gathering; (4) there are no compression or processing facilities on the system; (5) the system configuration resembles an inverted "Y," or "T;" and (6) the facilities do not extend beyond the system's central aggregation point.

WGP states that most of the Central Texas facilities also qualify as gathering under the central aggregation point test

[7] All of the facilities subject to this Petition are located entirely in Federal OCS waters with the one exception of the 6-inch stub referred to here which is located partially in Texas state waters.

relied on in Sea Robin. WGP states that the Central Texas System is characterized by two sets of pipelines that converge at Brazos Block 538, which constitutes the system's central aggregation point. All of the facilities to be spundown are upstream of, and feed into, that central aggregation point, with the exception of two small, noncontiguous, stub lines that feed directly into the main trunk of the system. WGP states that those stub lines are short (i.e., the longest line segment is 5.63 miles) and small in diameter (i.e., segments of 6-inch, 8-inch, and 12-inch line) and collect gas from platforms and production lines. Thus WGP states, the upstream legs as well as the two stub laterals exhibit the characteristics of gathering facilities.

IV. Interventions and Protests

Transco's application for abandonment authorization in Docket No. CP01-34-000 was published in the Federal Register on December 6, 2000.[8] Timely, unopposed motions to intervene were filed by companies as listed in the Appendix.[9] Atlanta Gas Light Company and Virginia Natural Gas Company, Piedmont Natural Gas Company, Inc., Producer Coalition, Public Service Electric and Gas Company, Sunoco Inc. (R&M), Superior Natural Gas Corporation and Walter Oil & Gas Corporation (Superior/Walter), United Cities Gas Company, a division of Atmos Energy Corporation, and Williams Gas Processing-Gulf Coast Company, L.P. filed untimely motions to intervene. We find that granting the motions to intervene out-of-time will not delay the proceeding, prejudice the rights of any party, or place an additional burden on existing parties. Accordingly, for good cause shown, we will grant the late-filed motions to

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[8] 65 FR 76226.

[9] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214 (2000).

intervene.[10] Indicated Shippers, KeySpan Delivery Companies, Producer Coalition, Sunoco Inc. (R&M), Superior/Walter, and Tennessee Gas Pipeline Company filed protests. The Transco Municipal Group and the Municipal Gas Authority of Georgia filed comments.

WGP's petition for a declaratory order in CP01-32-000 was published in the Federal Register on December 6, 2000.[11] Timely, unopposed motions to intervene were filed by companies as listed in the Appendix.[12] Atlanta Gas Light Company and Virginia Natural Gas Company, Piedmont Natural Gas Company, Inc., Producer Coalition, Sunoco Inc., Superior/Walter, Transcontinental Gas Pipe Line Corporation, and United Cities Gas Company, a division of Atmos Energy Corporation filed untimely motions to intervene. We find that granting the motions to intervene out-of-time will not delay the proceeding, prejudice the rights of any party, or place an additional burden on existing parties. Accordingly, for good cause shown, we will grant the late-filed motions to intervene.[13] Indicated Shippers, Producer Coalition, Sunoco Inc., Superior/Walter, and Tennessee Gas Pipeline Company filed protests.

On March 8, 2001, Transco and WGP filed an answer to the protests. On April 16, 2001, KeySpan filed a response to the answer. On June 4, 2001, Transco and WGP filed a separate answer to Tennessee's protest. Although our procedural rules do not permit answers to protests, or answers to answers, we may, for good cause, waive this provision.[14]

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[10] 18 CFR § 385.214(d) (2000).

[11] 65 FR 76227.

[12] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214 (2000).

[13] 18 CFR § 385.214(d) (2000).

[14] 18 CFR § 385.213(a)(2) (2000).

We find good cause to do so in this instance in order to insure a complete and accurate record in this proceeding.

We address the substance of the protests and responsive pleadings below.

V. DISCUSSION

A. Abandonment

Since the facilities proposed to be abandoned were certificated to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the abandonment of Transco's certificated interests in the OCS facilities requires Commission authorization under NGA section 7(b).

Transco historically designed, constructed and operated its systems in order to perform a bundled service—purchasing and aggregating gas supplies and transporting those supplies for sale to local distribution companies at the city gate. However, since the reconstruction of the natural gas industry, Transco provides an array of unbundled services, such as transportation, storage, and fully unbundled sales services, to a wide variety of customers. In its principal role as a transporter, Transco no longer requires its extensive gathering facilities to provide gas sales. Moreover, most of Transco's sales are made at its pooling points, not at the wellhead. Approval of the proposed abandonment will permit Transco to eliminate unnecessary expenses associated with these facilities and we expect WGP will make efficient use of the acquired facilities to provide open access gathering service. Accordingly, we find the public convenience and necessity permit Transco to abandon by transfer to WGP the portion of the offshore North Padre and Central Texas Systems described herein.

B. Opposition to the Abandonment

Various parties oppose the abandonment arguing that the facilities have and continue to perform a transmission function, and that transfer of the facilities to WGP will result in a lack of competitive alternatives and allow WGP to wield substantial market power over shippers.

1. Impact on Existing Shippers

Indicated Shippers, an ad hoc group of companies interested in gas transported on Transco's system,[15] object that the proposal would undo decades of Commission jurisdiction over the entirety of Transco's system and may permit the Transco corporate family to impose rates in excess of those previously deemed just and reasonable. Sunoco, Inc. (R&M) (Sunoco) agrees. Indicated Shippers object to Transco transferring a portion of its integrated system, including facilities currently functionalized as transmission, to an unregulated affiliate. Indicated Shippers also dispute the contention that maintaining these facilities as transmission hinders Transco's ability to compete with exempt gatherers, pointing out that Transco may discount its rates to compete and that Transco has failed to identify any gatherer against which it cannot effectively compete. Indicated Shippers contend that if the systems remain regulated, Transco will not be able to collect rates in excess of its maximum tariff rates. Indicated Shippers further state that in the absence of competitive alternatives, the abandonment of the North Padre and Central Texas systems will allow WGP to wield substan

[15] The members of the Indicated Shippers include: Amerada Hess Corporation, Amoco Production Company and BP Energy Company, Anadarko Petroleum Corporation, Burlington Resources Oil & Gas Company, Chevron U.S.A. Inc., Conoco Inc., Exxon Mobil Corporation, OXY USA Inc., Shell Offshore Inc., and Texaco Natural Gas, Inc. Each of the members has intervened separately.

tial market power permitting them to exact monopoly rents from shippers.

Sunoco restates many of these arguments, but complains that WGP appears to be planning to disavow Transco's existing contractual obligations and to force shippers to renegotiate long-term agreements that had been entered into at arm's length. Sunoco submits that such renegotiation is totally inappropriate where shippers, such as Sunoco, have existing long-term contracts. Sunoco believes that such renegotiation would adversely affects Sunoco's rights under the current contract, such as the fact that it currently receives FT feeder service, which it believes is essential for its operations, rather than IT feeder service. Sunoco requests that the spindown not be approved and suggests convening a technical conference to discuss these issues. However, Sunoco requests that, if the spindown is approved, the Commission should require Transco and WGP to provide written assurance that they will continue to honor Sunoco's contract with respect to all rights, terms and obligations, until the expiration of the contract.

Producer Coalition also suggests that the Commission should require Transco/WGP to disclose the proposed rates and conditions of future service on the North Padre and Central Texas facilities, prior to the issuance of a Commission order on the spindown. Producer Coalition disputes Transco/WGP's contention that WGP is negotiating with its customers and offering a package of services. It contends that WGP has failed to make any disclosure of the rates and terms and conditions it intends to offer. Without this advance information, Producer Coalition states, the shippers are left to assume the worst-that WGP, in fact, intends to exploit its market power.

Indicated Shippers also question the appropriateness of Transco abandoning seven source/receipt points, noting possible adverse impacts on certain interruptible shippers.

Indicated Shippers note that Transco claims that certain interruptible shippers will be affected by the abandonment, but that Transco fails to indicate that the reason that generally only IT shippers will be affected is that the facilities are part of Transco's IT-feeder system on which Transco offers FT service to only a few grandfathered shippers. Indicated Shippers submit that the abandonment will affect IT-feeder shippers whose gas feeds FT shippers at Transco's pools.

Superior/Walter offer similar arguments opposing the spindown. They allege that the proposal is nothing more than a vehicle to significantly increase the production area rates that marketers and producers must pay over the regulated IT feeder rates currently being charged. They also believe that the primary function of the facilities at issue remains transmission.

The KeySpan Delivery Companies request that the Commission not only approve the spindown of the North Padre and Central Texas facilities, but of all of the remaining production area facilities. They further request that the Commission require under section 5 of the NGA that Transco's rates be adjusted to reflect the removal of the related costs from Transco's jurisdictional rates. The Transco Municipal Group and the Municipal Gas Authority of Georgia (collectively Municipal Group) likewise request that Transco's rates be modified under either section 4 or section 5 of the Natural Gas Act to reflect the removal of the production area costs from the jurisdictional rates.

a. Transco and WGP Response

Transco/WGP argue that the proposed spindown is pro-competitive, in the public interest, and consistent with Commission policy. They contend that the proposed abandonment is an appropriate response to changed circumstances, since the facilities were constructed to support Transco's certificated sales, but Transco no longer provides a merchant

service and no longer needs the facilities. They believe that the Indicated Shippers' protest should be denied, because it is largely a collateral attack on the Commission's court-approved policy[16] favoring the spindown of gathering facilities, which Transco/WGP contend is consistent with the Commission's unbundling policies and other pro-competitive objectives. As to the issues of competitive factors and market power, Transco/WGP state that the Commission has found them irrelevant in determining the function of OCS facilities.[17] Transco/WGP find it disingenuous that some of the protestors consistently oppose spindowns by interstate pipelines, while at the same time some of them enjoy non-NGA regulated status for their own OCS gathering pipelines. In any event, Transco/WGP point to the fact that the protestors will be protected by the open access and nondiscrimination provisions of the OCSLA.

As to the contention that the spindown will result in a degradation of existing transportation service because seven receipt points will be deleted from certain of Transco's FT agreements, Transco/WGP state that WGP plans to negotiate post-spindown agreements with all shippers and it will operate the facilities in an open and nondiscrimina tory manner.

Transco/WGP agree with KeySpan that a comprehensive spindown of all Transco facilities that perform a gathering function is the preferable course.

As to the requests that the Commission require Transco to remove from its rates the cost of the facilities to be transferred, Transco states that if the Commission approves

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[16] Citing *Conoco Inc. v. FERC*, 90 F.3rd 536 (D.C. Cir. 1996), cert. denied, 519 U.S. 1142 (1997) (Conoco); *Pacific Gas and Electric Company v. FERC*, 106 F.3rd 1190 (5th Cir. 1997).

[17] Citing *Mid Louisiana Gas Company*, 67 FERC ¶ 61,255 at 61,851 (1994).

the spindown prior to the effective date of its next effective rate case, it will make a rate filing to reflect the spindown as approved.

b. Commission Response

Transco, like many interstate pipelines, found after restructuring its system consistent with Order No. 636, and moving from a bundled, merchant function to an unbundled, transportation function, that it no longer needed all of its existing system facilities. The Commission routinely grants requests to abandon facilities that we determine were used to gather gas supplies in support of the merchant gas sales function a pipeline no longer offers.[18] The fact that these facilities were previously certificated is not determinative of whether the present or future public convenience and necessity allow their abandonment. Further, the fact that a certificate exists for a given facility may not be determinative of its true jurisdictional status. As we stated in CNG, "until the Commission actually scrutinizes the facilities under the primary function test, the actual jurisdictional status of the facilities cannot be definitively determined." [19] Here, we find it reasonable for Transco to abandon the portions of the systems it seeks to spindown to its gathering affiliate because those facilities are no longer necessary for the service it currently provides. We also find that our policies regarding the spindown of offshore facilities is clear, and that the record in this proceeding is adequate for us to determine the proper function of the facilities. Therefore, we deny the request for a technical conference.

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[18] *See Trunkline Gas Company*, 95 FERC ¶ 61,337 (2001); *Natural Gas Pipeline Company of America*, 94 FERC ¶ 61,186 (2001); and *Northern Natural Gas Company*, 93 FERC ¶ 61,101 (2000).

[19] *CNG Transmission Corporation*, 67 FERC ¶ 61,330 at 62,177 (1994) (CNG).

The protestors argue that existing shippers will be adversely affected by the spindown because there will be no competition and they will have to deal with an unregulated entity for the same service that they currently receive from Transco. However, the transfer of gathering facilities and services by interstate pipelines to nonjurisdictional entities is consistent with the unbundling policies of Order No. 636 and should, in the long run, promote competition within the gathering industry.[20] As we have noted, section 1(b) of the NGA exempts gathering from the jurisdiction of this Commission. Thus, if the primary function of facilities for which abandonment is sought is found to be gathering, the Commission has no discretion to withhold such authorization. Here, consistent with the discussion below, we are finding that Transco's facilities perform a gathering function.

Nor is the issue of competition relevant to whether or not the Commission will regulate an affiliated gatherer's rates or terms and conditions of service after it acquires abandoned facilities. The Commission has no authority to regulate a gatherer's rates or its terms and conditions of service.[21] We find that the separate rate structure shippers will encounter after the spindown is consistent with the unbundling principles expressed in Order No. 636, where the Commission noted that shippers are expected to pay a separate rate for each separate service they receive. These shippers, in effect, have been on notice since February 21, 1996, when Transco filed its initial application in Docket No. CP96-206-000, that it desired to abandon, among others, the facilities at issue here. This interval of over five years has provided an extended transition period for these shippers to contemplate their

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[20] *See Northern Natural Gas Company*, 93 FERC ¶ 61,101 at 61,273 (2000).

[21] Conoco.

service options in the event the abandonment of these facilities was approved.[22]

In addition, the facilities at issue here are located on the OCS and will become subject to the OCSLA upon approval of the spindown. Under the OCSLA, WGP is prevented from discriminating against any shipper that seeks access to the facilities it will acquire in this proceeding from Transco. Assuming all existing shippers through the North Padre and Central Texas Systems want to continue moving their gas via the same path, both they and WGP will have a vested interest in reaching mutually agreed upon terms and conditions for continuation of the existing service. Since the OCSLA guarantees shippers open and nondiscriminatory access to offshore facilities, WGP cannot discriminate between shippers and has incentive (full facilities) to negotiate fairly with Transco's existing shippers. In Transco/WGP's answer, WGP states that it intends to negotiate post-spindown agreements with all shippers and that the spindown should not result in degraded service. Since we will continue to employ our NGA authority to ensure that Transco's jurisdictional rates remain just and reasonable, WGP's commitment, along with the protections provided by the OCSLA, will act to ensure adequate access and service to existing customers. We note that section 330.2 of our OCSLA regulations require that WGP report the terms under which it provides service to its shippers.[23] In the event that any shipper believes that either

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[22] *See NorAm Gas Transmission Co.*, 78 FERC ¶ 61,265, at 62,128 (1997). We previously conditioned the spindown or spinoff of gathering facilities on the acquiring entity's continuing to provide comparable service to existing shippers for a two-year term. This two-year time was intended to serve as a transitional period, during which shippers subject to NGA-regulated transportation service agreements could consider their options as NGA-exempt gathering customers. In Conoco, however, the court ruled that the Commission lacked jurisdiction to impose this particular condition on abandonments.

[23] 18 CFR § 332.2 (2000).

Transco or WGP have violated its statutory requirements under the OCSLA, or that the terms of service WGP offers any existing shipper prove inconsistent with the OCSLA's requirements, the shipper can file a complaint and the Commission will investigate any such complaint in a timely manner.[24] Further, Transco already has in its tariff standards of conduct for gathering affiliates that prevent it from acting in a discriminatory manner by guarding against the risk of affiliate abuse and ensuring an arm's length relationship between it and WGP.[25]

As to the requests of KeySpan and the Municipal Group, we will require Transco, consistent with section 154.303 (c)(2) of our regulations,[26] to remove the cost of the facilities abandoned and transferred here from the rates it proposes to charge in its current rate proceeding in Docket No. RP01-245-000.

2. Changed Position on Facilities

Indicated Shippers complain that Transco has previously argued that its offshore and onshore facilities were transmission facilities because they constitute a unitary, interdependent and integrated pipeline system that has always been regulated. Indicated Shippers contend that Transco has not justified its change in functionalization of the facilities from transmission to gathering. The Producer Coalition and Superior/Walter argue similarly.

a. Transco/WGP Response

Transco/WGP contend that the factors these protestors rely on (prior certificate and rate status, integrated nature of facilities, ownership by an interstate pipeline, reliance on past

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[24] 18 CFR § 385.206 (2000).

[25] *See* Third Revised Sheet No. 350, Third Revised Volume No. 1 to Transco's FERC Gas Tariff.

[26] 18 CFR § 154.303 (c)(2) (2000).

regulation, and the presence or absence of competition) are of little or no relevance to the jurisdictional status of the facilities.

b. Commission Response

We find no cause to disallow Transco the right to claim its facilities perform a gathering function, when in the past it may have advocated the facilities function as transmission. As noted above, the Commission has consistently found that a pipeline's functionalization of facilities for rate and accounting purposes does not determine the function of the facilities for purposes of jurisdiction under section 1(b) of the NGA. How pipelines historically functionalized their facilities for rate and accounting purposes does not prevent the Commission from applying the primary function test to determine the current jurisdictional status of the facilities.[27] Here, we are finding that portions of the Central Texas and North Padre Systems do, in fact, perform a gathering function and are therefore exempt from our jurisdiction under section 1(b) of the NGA. However, as we stated above, those facilities will remain subject to the OCSLA's requirements for open and nondiscriminatory access for all shippers.

3. Joint Ownership of Facilities

Tennessee Gas Pipeline Company (Tennessee), a partial owner of the Central Texas System, protests the proposal with regard to proposed service over the facilities. Tennessee also states that it has been unable to obtain a specific condition prohibiting discriminatory conduct by WGP or its affiliates and it asserts a right of first refusal (ROFR) to purchase Transco's interest in the facilities. Tennessee states that

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[27] *See Southern Natural Gas Company, et. al.*, 79 FERC ¶ 61,076 at 61,379 (1997).

Transco, Tennessee and three other natural gas pipelines[28] jointly own the Project Central Texas Loop, which comprises a part of the Central Texas System. According to Tennessee, each of the interest owners possess a ROFR under the joint Construction and Ownership Agreement to purchase Transco's interest in the Project Central Texas Loop.

Tennessee states that it has attempted to obtain assurances from Transco and WGP's corporate parent, William Field Services Group, Inc. (WFS) that the interests of its shippers would not be adversely affected by the proposed transfer of facilities. Despite such assurances by Transco and WGP, Tennessee contends that WFS has refused to agree to such assurances in connection with WGP's intentions to offer service over its interest in the facilities.

Tennessee states that only Transco and Tennessee own mainline facilities that are contiguous to the Project Central Texas Loop. Tennessee is concerned that if Transco's interest in the Project Central Texas Loop is transferred to WGP, affiliates of the Williams Companies will be the largest owner of the facilities, will be the operator of the facilities, and will own one of two pipelines with transmission mainline contiguous to the facilities. Tennessee believes that absent a specific condition prohibiting undue discrimination, WGP will have both the incentive and the opportunity to structure the non-jurisdictional services that it provides over these facilities in a manner that benefits its affiliates and disadvantages Tennessee. In addition, Tennessee argues that the Commission should not authorize Transco to spindown these facilities without first obtaining from Transco and WGP waivers of the ROFR from all the joint owners of the facilities, and requiring WFS/WGP to commit to the

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[28] The other owners are Columbia Gulf Transmission Company (Columbia Gulf), ANR Pipeline Company and Northern Natural Gas Company.

standards of conduct regarding gathering affiliates found in Transco's tariff.

a. Transco's and WGP's Response

Transco/WGP responded stating that neither of the issues raised provides a valid reason to delay or condition the spindown. Transco states that Tennessee is already protected from discriminatory conduct by affiliates by both Transco's tariff [29] and the OCSLA, which mandates that all pipelines on the OCS "provide open and nondiscriminatory access to both owner and nonowner shippers." [30] Transco states that WGP is an OCS pipeline operator and obligated to comply with provisions of the OCSLA. Further, Transco argues that the Commission does not have jurisdiction over non-pipeline gatherers, and thus cannot impose conditions on WGP or WFS.

Transco also states that Tennessee's assertion of a ROFR to purchase a portion of the facilities should not delay the proceeding. Transco contends that it will address any potential issues concerning ROFR and will take any appropriate action in accordance with its contract prior to transfer of the facilities. Transco states that its agreement with WGP provides that the parties will obtain any necessary third party approvals or waivers prior to transfer of the facilities.

b. Commission Response

We find that Tennessee's concern regarding a ROFR to purchase a portion of the Central Texas System is not germane to the abandonment issue before us. We have determined that Transco no longer needs the facilities to perform its jurisdictional transportation service. More

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[29] *See* note 24.

[30] Transco cites *Northern Natural Gas Company*, 93 FERC ¶ 61,101 at 61,274 (2000), which states "[T]he OCSLA guarantees shippers open and nondiscriminatory access to offshore facilities."

importantly, we are finding concurrently that the facilities will perform a nonjurisdictional gathering function. Tennessee raises an issue regarding the status of a private contractual arrangement that is not before the Commission.

As we stated above, both WGP and the existing shippers have legitimate reasons to negotiate fair successor service to that provided by Transco. In addition, Transco is prohibited by its tariff from giving preferential treatment to its gathering affiliates, or tying any of its services to services provided by its gathering affiliates. Thus, we can oversee Transco's dealings with WGP and can enforce the standards of conduct regarding gathering affiliates in Transco's tariff. However, we cannot require WGP to abide by Transco's tariff provisions, simply because we lack jurisdiction over WGP. However, WGP will be bound by the open-access, nondiscriminatory provisions of the OCSLA, which, in concert with our continued regulation of Transco's rates and terms and conditions of service and our complaint procedures, will serve to provide shippers with adequate protection after the spindown.

C. Jurisdictional Status of Facilities

WGP asks us to declare that these facilities would be nonjurisdictional gathering facilities if operated as described in its petition.[31]

Under NGA section 1(b), the Commission has jurisdiction to regulate the transportation and sale for resale of natural gas in interstate commerce and any natural gas company engaged in that transportation or sale. Section 1(b) states, however, that the Commission's jurisdiction does not extend

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[31] Transco's proposed spindown is being undertaken at the same time as Transco seeks in Docket No. RP92-137-050 to implement a two-part, production area, straight fixed variable rate proposal, and firm-to-gathering rate design. The Commission addressed these issues in its May 31, 2001 order in that proceeding, 95 FERC ¶ 61,322 (2001).

to facilities used for the production or gathering of natural gas. To determine whether particular facilities perform primarily a gathering or transmission function, the Commission considers the criteria articulated in Farmland Industries, Inc., (Farmland)[32] as modified by Amerada Hess Corporation (Amerada Hess)[33] and Sea Robin.

In Farmland, the Commission enumerated several physical and geographic factors to be considered in determining the primary function of a facility, including: (1) the facility's length and diameter, (2) the extension of the facility beyond the central point in the producing field, (3) the facility's geographic configuration, (4) the location of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) operating pressures of the facility.[34] The Commission does not consider any single factor to be determinative and recognizes that all factors do not necessarily apply in all situations.

Over the past decade, the Commission found it necessary to modify the primary function test to recognize the unique physical characteristics of offshore pipeline facilities built on the OCS. In Amerada Hess, the Commission acknowledged that technological advances make it possible to drill for gas at increasing offshore depths. Thus, following Amerada Hess, the Commission has applied a "sliding scale which will allow the use of gathering pipelines of increasing lengths and diameters in correlation to the distance from shore and the

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[32] 23 FERC ¶ 61,063 (1983).

[33] 52 FERC ¶ 61,268 (1990).

[34] In addition to the Farmland factors, the Commission considers these non-physical criteria in its jurisdictional analysis: (1) the purpose, location, and operation of the facility, (2) the general business activity of the owner of the facility, and (3) whether the jurisdictional determination is consistent with the objectives of the NGA and Natural Gas Policy Act.

water depth of the offshore production area."[35] This "modified primary function" test recognizes that a relatively long pipeline on the OCS may be consistent with a primary function of gathering or production where onshore it would not.

In order to further clarify the jurisdictional status of offshore facilities, the Commission issued an OCS Policy Statement[36] which added a new factor to the primary function test concerning facilities that are designed to collect gas produced in water depths of 200 meters or more. The Policy Statement creates a presumption that these deep water facilities are gathering facilities up to the point or points of interconnection with the interstate pipeline grid. Aside from this presumption concerning deep water facilities, the Policy Statement left the application of the primary function test unchanged.

More recently, as a result of the court's opinion in Sea Robin, the Commission has reconsidered the primary function test in view of the unique challenges presented in the attempt to apply Farmland factors to offshore facilities. Sea Robin vacated and remanded Commission orders that found under the primary function test, that Sea Robin's OCS pipeline facilities were jurisdictional transmission facilities. In its primary function analysis the Commission excluded most of the Farmland factors because they were difficult or impossible to apply to the distinct activity of retrieving gas from the OCS. Thus, the only physical factor considered by the Commission was the size and length of Sea Robin's pipeline. The Commission also gave weight to non-physical

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[35] *Id.* at 61,988.

[36] Gas Pipeline Facilities and Services on the Outer Continental Shelf-Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act, 74 FERC ¶ 61,222 (1996), order dismissing reh'g, 75 FERC ¶ 61,291 (1996).

criteria such as business purpose, ownership and prior certification of the facilities.

The Sea Robin court found, among other things, that the Commission's focus primarily on the length and diameter of the overall system was not reasoned consideration. Further, the court acknowledged that non-physical considerations are relevant in the analysis but that they are secondary to physical considerations which must be used in determining where gathering ends and transportation begins.

On remand, the court allowed the Commission to reformulate its primary function test—to replace those physical and operational criteria that are not relevant to the characteristics of OCS pipelines with other criteria that are. The court also allowed that the Commission could consider suggestions made by Sea Robin that portions of its system were predominantly involved in gathering while other portions were transmission.

In the order on remand in Sea Robin, the Commission took the court's suggested approach and reconsidered the application of the primary function test to the OCS facilities and concluded that the "behind-the-plant" factor was not necessarily determinative when the primary function test is applied to offshore facilities. Rather, the Commission decided to assess the physical configuration of a pipeline system to determine if there is a central location where gas is aggregated for further transportation to shore. The Commission concluded that it would view such a location as being the offshore equivalent of the onshore "central-point-in-the-field" factor of the primary function test.

In sum, the reformulated primary function test (1) adopts an additional analytical element applicable to systems that contain a centralized aggregation point, (2) adjusts the weight afforded to the "behind-the-plant" criterion so that the location of the processing plants is not necessarily determi-

native and can be outweighed by other factors, and (3) focuses primarily on physical factors. After applying the reformulated primary function test to Sea Robin's system, the Commission determined that gathering on Sea Robin ends at an internal point on the pipeline's certificated system—that point being Sea Robin's Vermillion Block 149 Compression Station where gas from numerous production platforms is aggregated—and that transportation occurs over the remaining and longest part of its system which consists of a straight, large diameter trunkline that delivers gas to onshore processing plants.

1. Protests

Indicated Shippers protests WGP's declaratory order pointing out that in the OCS Policy Statement, the Commission rejected calls by Transco and other companies that all OCS facilities be found to be gathering. It argues that the Policy Statement provides that new facilities located in water depths of 200 meters or more will be presumed to be gathering, but that the Commission would not withdraw its jurisdiction, absent changed circumstances, for existing facilities in shallower waters. Indicated Shippers submits that the facilities at issue are located in waters shallower than 200 meters and that Transco has not demonstrated that the primary function of the facilities has changed. Sunoco contends similarly and states that the overwhelming majority of the facilities subject to the spindown are not characteristic of gathering facilities. Likewise, Superior/Walter argue that Transco has not shown that the facilities are, in fact, gathering rather than transmission.

Indicated Shippers and Sunoco also dispute Transco's reliance on Sea Robin as the primary support for their request to refunctionalize the South Padre and Central Texas facilities. In particular, they object to the new "central aggregation point" test added to the OCS criteria and point out that certain parties have sought court review of the Sea

Robin orders setting forth the new test. Indicated Shippers also note that numerous wells to be attached to the two systems are located some distance from any of the Transco facilities. They submit that the gathering function is applicable to these facilities, not the Transco facilities at issue. Indicated Shippers also note that a number of the facilities at issue are jointly owned with other pipelines, and request that the Commission investigate whether, from the perspective of the operations and activities of the other owners, the facilities should remain transmission.

Indicated Shippers also submits that a central factor in determining the primary function of the facilities at issue is the overall business purpose of the system. They submit that the OCS transmission facilities are part of Transco's integrated pipeline system.

Producer Coalition, another ad hoc group of natural gas producers, who market gas on Transco's system[37] primarily objects to the services using the facilities no longer being subject to rate caps if the Commission determines the facilities to be gathering. Producer Coalition suggests that the Commission take no action on the spindown until after the United States Court of Appeals for the D.C. Circuit decides the Sea Robin case. Like Indicated Shippers, Producer Coalition submits that, rather than the reformulated modified primary function test announced in Sea Robin, the Commission should adopt the "feeder line test" described in the legislative history to Section 5(f)(2) of the Outer Continental Shelf Lands Act (OCSLA). Under the feeder line test, gathering extends from the wellhead to the point where the gas is first collected and treated to remove free water in

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[37] This group consists of Dominion Exploration & Production, Inc., Devon Energy Corporation, Forest Oil Corporation, The Houston Exploration Company, Newfield Exploration Company, Ocean Energy, Inc., and TotalFinaElf E&P U.S.A., Inc. Ocean Energy, Inc. has already intervened in this case.

preparation for injection into a pipeline for transportation to shore. They believe that since the facilities listed in the application and petition appear to be downstream of the platform separators and treating facilities, they are not gathering facilities.

Producer Coalition also believes that, even if the Commission's Sea Robin order is sustained, the Transco facilities are not used for a gathering function. It notes that Transco and WGP rely on the Commission's central point of aggregation test. However, it states that the Commission determined in later orders that the primary function of offshore facilities was not reduced to simply identifying the first fork or interconnection in a line leading from shore.[38] It stresses the integrated nature of Transco's system and indicates that the Commission takes the aggregation point on a system into account along with other factors of the primary function test.

a. Transco/WGP Response

Transco/WGP contend that the Indicated Shippers' functional analysis of the facilities unduly relies on non-physical factors, such as prior certificate and rate classification, system integration, and effects on competition, ownership and business purpose, which the courts have repeatedly held are of little or no relevance to the jurisdictional status of facilities under section 1(b) of the NGA. Transco/WGP also point out that, even in the absence of continued NGA regulation of these facilities, Indicated Shippers still will be protected by the open access and nondiscrimination provisions of the OCSLA.

Contrary to Indicated Shippers' contention that the Sea Robin decision is too broad an interpretation of the NGA

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[38] *See Dauphin Island Gathering System*, 93 FERC ¶ 61,198 at 61,654 (2000).

section 1(b) exemption. WGP states that it showed in that case that the Commission's reformulated primary function test results in too limited a view of the exemption. Transco/WGP state that they relied on Sea Robin to guide the scope of the instant spindown, while reserving their right to challenge any findings in appropriate proceedings. Transco/WGP submit that Sea Robin provides compelling support for non-jurisdictional status for the subject spindown, in that the geographical configuration (inverted Y) of the Sea Robin system bears a striking resemblance to the configuration of the Central Texas System. That is, the upstream legs of the Sea Robin system are configured similar to the upstream legs of the Central Texas System.

Transco/WGP oppose the Producer Coalitions' request to delay the processing of the spindown until after the D.C. Circuit acts on the Sea Robin appeal. Transco/WGP complain that, because of previous delays in processing its spindown proceedings, they have already been placed at an unfair disadvantage, vis-a-vis other competitors for OCS gathering services. Transco/WGP also reject Producer Coalition's request for the Commission to adopt a limited interpretation of gathering that they claim would result in the Commission's exercise of NGA jurisdiction over virtually all OCS pipelines (all lines downstream of initial platform separators). Transco/WGP contend that the "feeder line" test was specifically rejected by the Commission as legally deficient in Sea Robin.[39] Transco/WGP state that other attempts to unduly limit the section 1(b) gathering function have been struck down by various courts of appeal.

Transco/WGP also object to the Producer Coalition's request to require the disclosure of post-spindown rates and terms and conditions to be offered to shippers. They submit that the Commission has no authority to regulate the post-

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[39] 92 FERC at 61,294.

spindown rates and terms and conditions offered by gathering companies, even those affiliated with a jurisdictional gathering company. Also, they indicate that the Commission has recognized that the OCSLA does not authorize NGA-type rate regulation of OCS pipeline companies.[40]

Transco/WGP also dismiss as inaccurate the contention that, because the Central Texas facilities are jointly owned by Transco, Tennessee, and Columbia Gulf, and that because Tennessee and Columbia Gulf are fully booked, WGP will be able to raise rates when the facilities are spun down. Transco/WGP state that the Central Texas facilities are substantially underutilized, with one-half to two thirds of the capacity unused, and that the owners have marketed substantial portions of the capacity at discounted rates. Also, Transco/WGP reiterate that allegations about competition for gathering services are irrelevant to the jurisdictional status of the facilities.

b. Commission Response

We conclude, for the reasons discussed below, that an assessment of the primary function factors, as modified with respect to offshore facilities, demonstrates that both the North Padre and Central Texas facilities at issue here are performing primarily a gathering function and will continue to be used in this capacity following their abandonment by sale to WGP. Accordingly, we find the North Padre and Central Texas facilities to be exempt from our NGA regulatory oversight.

The North Padre facilities consist of 3.83 miles of 10- inch and 18.79 miles of 20-inch diameter pipeline, which are relatively small and short compared to some of the facilities found to be gathering in Sea Robin. The 10-inch line is

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[40] Order No. 639-A, FERC Stats. & Regs., Regs. Preambles ¶ 31,103, at 31,686 (2000).

common for gathering facilities, and even the 20-inch line does not necessarily denote a transmission function. More importantly, the length and diameter of both lines reflects the large volume of gas, approximately 100 MMcf per day, that is collected from numerous wells in the offshore production area in which the facilities are located. While the wells may not be directly connected to either lateral, that does not disqualify the lines from a finding of gathering. It merely reflects the nature of offshore production, where gas from numerous wells is aggregated at production platforms for movement onshore.

The North Padre system is configured in the shape of an inverted "Y" with two relatively short legs branching out from a central point, which connects to the main transmission trunk. These legs, as noted, serve to collect gas from the surrounding production areas. This configuration is consistent with a gathering function.

There is no compression located along the North Padre facilities, which means that the system operating pressures of between 750 and 900 psig are a function of the wellhead pressures. The wellhead pressures act to push the gas through the facilities, which is typical of a gathering function,[41] unlike compression, which is typical of a transmission function. The operating pressures are consistent with those of other offshore facilities found to be gathering.[42]

In addition, there are no processing plants located on or connected to the North Padre facilities. We have previously discussed the impracticality of locating processing plants offshore[43] and concluded that, in the offshore context, the

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[41] *See Tarpon Transmission Company*, 78 FERC ¶ 61,025 (1992).

[42] *See Trunkline Gas Company*, 95 FERC ¶ 61,337 (2001).

[43] *See, e.g., EP Operating v. FERC*, 876 F.2d 45, 49 (5th Cir. 1989).

absence of processing plants is of little value in assessing the primary function of facilities.

In Sea Robin, we stated that for offshore systems, in addition to the other Farmland factors, we would consider whether the system contained a centralized aggregation point.[44] The North Padre facilities exhibit characteristics of such an aggregation point. We believe that the central aggregation point is located in North Padre Island Block 956, where the 10-inch and 20-inch legs, which gather the gas, converge to form a single 24- inch line that transports the gathered gas onshore to Transco's mainline. In Sea Robin, we found the central point of aggregation exemplified a "marked change in the physical attributes and geographic configuration."[45] Although the North Padre Island Block 956 point does not exhibit as strong an indication of a marked change as was the case in Sea Robin, we nevertheless find it functions as an aggregation point that may be interpreted as indicating a demarcation of gathering and transmission functions.

The Central Texas System consists of approximately 270 miles of 6-inch to 30-inch offshore lateral facilities that feed into a central point of aggregation located at Brazos Area Block 538, which is connected to a set of 30-inch and 36-inch trunk lines for transportation onshore. These facilities include two small, noncontiguous stub lines, which feed directly into the trunklines downstream of the aggregation point. Over 76 percent of these facilities are 20-inches or less in diameter. The lines range in length, with the shortest being slightly

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[44] Since offshore gas may be collected from numerous wells throughout a producing field, and then brought to a production platform, the location of such platform is not a reliable indicator of the central point in the field. In Sea Robin, we found it appropriate to employ the centralized point of aggregation for offshore systems as an analog for the central point in the field for onshore systems.

[45] 87 FERC ¶ 61,384, at 62,430 (1999), order denying reh'g, 92 FERC ¶ 61,072 (2000).

more than one- tenth of a mile, and the largest being a 30 mile long, 30-inch in diameter line. The size and scope of these facilities is consistent with those found to be gathering in Sea Robin. Even the 30-inch line does not necessarily denote a transmission function. The length and diameter of the lines reflects the large volume of gas, approximately 400 MMcf per day, that is collected from numerous wells attached to various production platforms and 73 receipt points in the offshore production area in which the facilities are located. This reflects a gathering rather than transmission function. In this instance, the absence of direct well tie-ins to the Central Texas facilities does not point to a transmission function. In the context of offshore facilities, the Commission has found that a lack of well connections along the length of facilities is attributable to the nature of offshore drilling, where, as noted above, gas from numerous wells is aggregated on individual platforms for delivery onshore.[46]

The configuration of the Central Texas facilities closely resemble that of an inverted "Y" with the legs branching out from the Brazos Area Block 538 central aggregation point. The numerous legs in this configuration extend out into the surrounding production areas and serve to gather gas for movement to the central aggregation point. This is consistent with a finding of gathering. In addition, the fact that the two small stub lines are located downstream from the central aggregation point does not detract from their primary function of gathering. Like the upstream legs, these lines also serve to gather gas from production located in their vicinity.

As with the North Padre facilities, there is no compression located along the Central Texas facilities. None is necessary since the system operating pressures of between 725 and 1,200 psig are a function of the natural wellhead delivery pressures and serve to move the gas onshore. While these

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[46] 67 FERC ¶ 61,256 at 61,859 (1994).

pressures would indicate a transportation function onshore, they are not dispositive in the offshore context. These pressures are consistent with the nature of offshore production and are also indicative of a gathering function, not a transmission function.[47]

There are also no processing plants located on or connected to the Central Texas facilities. Again, we have previously discussed the impracticality of locating processing plants offshore[48] and concluded that, in the offshore context, the absence of processing plants is of little value in assessing the primary function of facilities.

As stated above, we treat offshore systems in a different manner than onshore systems. For offshore systems, in addition to the other Farmland factors, we consider whether the system contains a centralized aggregation point. Such a point would be analogous to an onshore system exhibiting a central point in the field. The Central Texas facilities have such an aggregation point at Brazos Area Block 538, where the 6 to 30-inch lines converge on a platform that contains valve manifolds and mechanical pig launchers and receivers. At the platform, the upstream lines feed into the main 30-inch and 36-inch trunklines that move the gas onshore. While there are interconnects with two relatively small Transco laterals downstream of the platform, the gas introduced from them is dwarfed by gas volumes collected at and upstream of the Block 538 platform. In Sea Robin, we found the central point of aggregation on Sea Robin's system exemplified a "marked change in the physical attributes and geographic configuration." We find that the Brazos Area Block 538 platform is similar to the point in Sea Robin, and functions as an aggregation point that may be interpreted as indicating a demarcation of gathering and transmission functions. The

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[47] *See* note 41.

[48] *See, e.g., EP Operating v. FERC*, 876 F.2d 45, 49 (5th Cir. 1989).

collection or gathering of gas occurs primarily upstream of the platform, while transportation occurs through the looped trunklines downstream from that point.

Protestors want the Commission to delay action here pending the outcome of the court proceedings in Sea Robin and suggest that we adopt the "feeder line test" rather than the primary function test to determine gathering. First, we will not hold this proceeding in abeyance pending the outcome of the Sea Robin court case. The Commission currently has guidance from the court on how to proceed in distinguishing gathering from transmission on the OCS and we use that guidance in our determination here. Second, we have already addressed the "feeder line" issue in our order on Sea Robin. There, the Commission rejected arguments that, as a result of enactment of the OCSLA, we must adopt a "feeder line" definition of gathering. For the same reasons, we reach the same conclusion here.[49]

Indicated Shippers argue that our OCS Policy Statement established the expectation that, absent changed circumstances, existing offshore facilities are to retain their jurisdictional or nonjurisdictional status under the NGA. We disagree. The OCS Policy Statement is not intended to stand for permanently fixing the present jurisdictional status of offshore facilities. The OCS Policy Statement anticipates that facilities may be reclassified in response to changing circumstances. We find Transco's restructuring and the adaptation of our primary function test in the Sea Robin order on remand qualify as legitimate reasons to revisit the jurisdictional status of Transco's existing offshore facilities.

Indicated Shippers contends that a central factor in determining the primary function of the facilities at issue is the overall business purpose of the system. While we find it useful to look at the nature of the company that owns and

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[49] *See* 92 FERC ¶ 61,072 at 61,294 (2000).

operates facilities proposed to be spundown, that is but one of the factors to be considered. Here, Transco is an interstate gas transporter that has gone through restructuring to segregate its previously bundled services. We find that Transco's primary business is that of transportation. However, we also find that the nature of Transco's business, in and of itself, does not disqualify the facilities at issue from a determination of gathering. The Commission, in its primary function analysis, does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply in all situations. It is the nature of Transco's business that drives it to spindown the gathering facilities at issue here.

While not all factors of our primary function test point to an identical outcome, we nonetheless find that, on balance, the North Padre and Central Texas facilities function primarily as gathering facilities and are exempt from our jurisdiction under section 1(b) of the NGA. Since WGP is currently an NGA-exempt gatherer, we declare that subsequent to the sale to WGP, the North Padre and Central Texas facilities will operate as NGA- exempt gathering facilities. Accordingly, we will approve Transco's request to abandon the facilities by sale to WGP.

ANR, Northern, Columbia Gulf, and Tennessee, co-own with Transco some of the subject facilities we have found to be nonjurisdictional. To the extent that these co-owners currently functionalize their interests in the facilities as transmission, they will need to refunctionalize their facilities as gathering for rate and accounting purposes in their next NGA section 4 rate proceedings.[50]

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[50] *See CNG Transmission Corp.*, 67 FERC ¶ 61,330, at 62,178 (1994); *Southern Natural Gas Company*, 79 FERC ¶ 61,076 at 61,380 (1997); and *Natural Gas Pipeline Company of America*, 95 FERC ¶ 61,317 (2001).

C. Environmental

Finally, we conclude that approval of the proposed abandonment will not constitute a major federal action significantly affecting the quality of the environment.

At a hearing held on July 25, 2001, the Commission on its own motion received and made a part of the record in these proceedings all evidence submitted, including the applications and petitions and exhibits supporting the sought authorizations, and after consideration of the record,

The Commission orders:

(A) In Docket No. CP01-34-000, Transco is granted permission and approval under NGA section 7(b) to abandon by sale to WGP, its interests in the North Padre and Central Texas facilities described in its application and in this order.

(B) In Docket No. CP01-32-000, the Commission declares that upon acquisition by WGP, the facilities to be abandoned will be deemed gathering facilities exempt from the Commission's jurisdiction under NGA section 1(b).

(C) Transco shall notify the Commission within 10 days of the date of abandonment of the facilities described above.

(D) Transco is authorized to abandon its Rate Schedule X-66 transportation service to Texas Eastern Transmission Corporation, as well as the affected receipt points under its part 284 agreements with Sun Company, Inc. and Texaco Refining and Marketing, Inc.

(E) Consistent with section 154.303(c)(2) of our regulations, Transco is directed to adjust its rates to remove the cost of the North Padre and Central Texas facilities in its current rate proceeding in Docket No. RP01-245-000.

(F) The protests in this proceeding are denied.

By the Commission.
[SEAL]
David P. Boergers
Secretary.

APPENDIX

Interventions and Protests in Docket No. CP01-32-000

Amerada Hess Corporation
Amoco Production Company and BP Energy Company
Anadarko Petroleum Corporation
Atlanta Gas Light Company and Virginia Natural Gas Company
Burlington Resources Oil & Gas Company
Chevron U.S.A. Inc.
Columbia Gulf Transmission Company
Enron North America Corp.
Enterprise Oil Gulf of Mexico Inc.
Exxon Mobil Corporation
Indicated Shippers
Kerr-McGee Oil & Gas Corporation
KeySpan Delivery Companies
Ocean Energy, Inc.
Pan Canadian Energy Services Inc.
Piedmont Natural Gas Company, Inc.
Process Gas Consumers Group
Producer Coalition
Public Service Commission of the State of New York
Shell Offshore Inc.
Sunoco Inc.
Superior Natural Gas Corporation and Walter Oil & Gas Corporation
Tennessee Gas Pipeline Company
Texaco Natural Gas Inc.
Transco Municipal Group and the Municipal Gas Authority of Georgia
Transcontinental Gas Pipe Line Corporation
United Cities Gas Company, a division of Atmos Energy Corporation

Interventions and Protests in Docket No. CP01-34-000

Amerada Hess Corporation
Amoco Production Company and BP Energy Company
Anadarko Petroleum Corporation
Atlanta Gas Light Company and Virginia Natural Gas Company
Baltimore Gas and Electric
Burlington Resources Oil & Gas Company L.P.
Chevron U.S.A. Inc.
Columbia Gulf Transmission Company
Conoco Inc.
Consolidated Edison Company of New York
Delmarva Power & Light Company
Enron North America Corp.
Enterprise Oil Gulf of Mexico Inc.
Exxon Mobil Corporation
Indicated Shippers
Kerr-McGee Oil & Gas Corporation
KeySpan Delivery Companies
Motiva Enterprises LLC
Ocean Energy, Inc.
Pan Canadian Energy Services Inc.
PECO Energy Company
Phillips Petroleum Company and Phillips Gas Marketing Company
Piedmont Natural Gas Company, Inc.
Process Gas Consumers Group
Producer Coalition
Public Service Commission of the State of New York
Public Service Electric and Gas Company
Shell Offshore Inc.
Sunoco Inc.
Superior Natural Gas Corporation and Walter Oil & Gas Corporation
Tennessee Gas Pipeline Company
Texaco Natural Gas Inc.

Transco Municipal Group and the Municipal Gas Authority of Georgia

United Cities Gas Company, a division of Atmos Energy Corporation

Washington Gas Light Company

Williams Gas Processing-Gulf Coast Company, L.P.

APPENDIX G

FEDERAL ENERGY REGULATORY COMMISSION
Commission Opinions, Orders and Notices

[Filed December 19, 2001]

Docket No. CP01-34-002
Docket No. CP01-32-001

Transcontinental Gas Pipe Line Corporation
Williams Gas Processing-Gulf Coast Company, L.P.

ORDER ON REHEARING

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

On August 20, 2001, Transcontinental Gas Pipe Line Corporation (Transco) filed a Request for Rehearing and Limited Stay of the Commission's Order Authorizing Abandonment and Determining Jurisdictional Status of Facilities issued in these dockets on July 25, 2001 (July 25 Order).[1] On August 24, 2001, the Producer Coalition[2] and Indicated Shippers[3] also filed Requests for Rehearing of the

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[1] Transcontinental Gas Pipe Line Corporation, et al., 96 FERC ¶ 61, 115 (2001) (July 25 Order).

[2] The Producer Coalition is an ad hoc group of natural gas producers, made up of Devon Energy Corporation, Dominion Exploration & Production, Inc. Forest Oil Corporation, The Houston Exploration Company, Newfield Exploration Company, and Ocean Energy, Inc. These companies have significant investment in oil and gas exploration and production projects in the Gulf of Mexico and are shippers and marketers of gas on numerous OCS pipelines.

[3] Indicated Shippers is an ad hoc group of companies having an interest in gas transported on the Transco system. In this case, the members of Indicated Shippers are: Amerada Hess Corporation, Amoco Production

July 25 Order. On September 10, 2001, Key Span Delivery Companies, Atlanta Gas Light Company and Virginia Natural Gas Company, Consolidated Edison Company of New York, Inc., Delmarva Power & Light Company, Philadelphia Gas Works, Public Service Electric and Gas Company and Washington Gas Light Company (KeySpan, et al.) submitted a response in partial opposition to Transco's requests for rehearing and limited stay.[4]

The July 25 Order approved a request by Transco to abandon facilities comprising portions of the North Padre Island Gathering System (North Padre System) and the Central Texas Gathering System (Central Texas System) located offshore Texas by transfer to its gathering affiliate, Williams Gas Processing- Gulf Coast Company, L.P. (WGP). The July 25 Order also granted WGP's request that the Commission declare that the facilities it proposes to acquire from Transco will be, upon abandonment by transfer to WGP, gathering facilities and services, exempt from the Commission's jurisdiction under the NGA.[5] The July 25 Order also directed Transco to adjust its rates to remove the cost of the facilities to be abandoned from its current rate proceeding in Docket No. RP01-245-000. This order denies or grants the requests for rehearing, as discussed below.[6] As noted in the

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Company, BP Energy Company, Burlington Resources Oil & Gas Company, L.P., Chevron U.S.A., Inc., Exxon Mobil Corporation, Occidental Energy Marketing, Inc., Shell Offshore Inc., and Texaco Natural Gas, Inc.

[4] Under the Commission's Rules of Practice and Procedure, there is nothing which forecloses KeySpan, et al. from responding to a request for stay. Under Rule 713(d) of those Rules, parties are normally precluded from responding to a request for rehearing. 18 CFR § 713(d). However, the Commission has determined that for good cause shown it will accept answers to rehearing.

[5] July 25 Order at 61,442, Ordering paragraph (B).

[6] As the Commission is granting the request for rehearing on the rate issue which is the subject of the motion for stay, the motion is moot.

July 25 Order, abandonment serves the public interest by permitting Transco to eliminate unnecessary facilities no longer needed to provide certificated services consistent with the unbundling policies of Order No. 636.[7] Granting rehearing on the rate issue serves the public interest by assuring that the jurisdictional rates will continue to reflect the cost of facilities used to provide jurisdictional service while also preserving the integrity of the Commission's ratemaking policies.

I. Background

The July 25 Order permitted Transco to abandon, by transfer to its affiliate WGB, portions of its North Padre System and Central Texas System located offshore Texas. The facilities to be abandoned from the North Padre System consist of 3.83 miles of 10-inch pipeline and 18.79 miles of 20-inch pipeline located in the North Padre Island Area and the North Padre Island Area East Addition. The facilities to be abandoned from the Central Texas system consist of approximately 271 miles of pipeline of 6-inch to 30-inch diameter located in the Galveston Area, Brazos Area, Brazos Area South Addition, Matagorda Island Area and Mustang Island Area East Addition. In response to WGP's request, the July 25 Order sought to determine whether the facilities at issue were used primarily to transport gas, and thereby were subject to the Commission's jurisdiction under the NGA, or were used primarily to produce or gather gas, and thereby were exempt from the Commission's NGA jurisdiction.[8]

To determine the primary function of particular facilities, the Commission applies the criteria articulated in Farmland Industries, Inc., (Farmland).[9] In Farmland, the Commission

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[7] 96 FERC at 61,434-5.

[8] Section 1(b) of the NGA states that "[t]he provisions of this Act . . . shall not apply to . . . the production or gathering of natural gas."

[9] 23 FERC ¶ 61,063 (1983).

enumerated several physical and geographic factors to be considered in determining the primary function of a facility, including: (1) the facility's length and diameter, (2) the extension of the facility beyond the central point in the producing field, (3) the facility's geographic configuration, (4) the placement of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) operating pressures. In addition to these physical and geographic criteria, the Commission also considers the purpose, location, and operation of the facility, the general business activity of the owner of the facility, and whether the jurisdictional determination is consistent with the objectives of the NGA and Natural Gas Policy Act. We do not consider any single factor to be determinative and recognize that all factors do not necessarily apply in all situations.

The Commission has modified this primary function test for facilities located offshore. In 1990, in Amerada Hess Corporation (Amerada Hess),[10] the Commission observed that as a result of "recent advances in engineering and available technology, offshore drilling operations continue to move further offshore and further from existing interstate pipeline interconnections."[11] Given the increasingly remote location of such offshore facilities, the Commission found that offshore pipelines used to produce or gather gas may be larger and longer than onshore pipelines that perform the same function. Accordingly, the primary function test was modified for application to offshore facilities, by applying "a sliding scale which will allow the use of gathering pipelines of increasing lengths and diameters."[12]

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[10] 52 FERC ¶ 61,268 (1990).

[11] *Id.*, at 61,988.

[12] *Id.*

In Sea Robin Pipeline Company (Sea Robin),[13] the Commission reformulated the primary function test with respect to offshore facilities by (1) adopting an additional analytical element applicable to systems that contain a centralized aggregation point; (2) adjusting the weight to be afforded the "behind-the-plant" criterion so that the location of processing plants is not necessarily determinative and can be outweighed by other factors, and; (3) focusing primarily on physical factors.

The July 25 Order, in considering the primary function of the subject facilities, applied the Farmland test as modified in Amerada Hess and as reformulated in Sea Robin. The Commission found that: (1) the North Padre facilities are configured in the shape similar to a "Y" with the legs branching out from the North Padre Block 956 central aggregation point; (2) the Central Texas facilities are configured in the shape of a "Y" with the legs branching out from the Brazos Block 538 central aggregation point; (3) consistent with Sea Robin, the legs upstream from the central points intersect with supply laterals throughout their length; (4) the length and diameter of the numerous pipelines are consistent with offshore gathering facilities; (5) the wellhead pressures are typical of a gathering function; (6) the absence of processing plants is of little value in assessing the primary function of facilities. Accordingly, the Commission concluded that the "primary function" of the facilities located at or upstream of North Padre Block 956 and Brazos Block 538 High Island Block 10 is gathering.

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[13] 71 FERC ¶ 61,351 (1995), *order on reh'g*, 75 FERC ¶ 61,332 (1996), *remanded sub nom. Sea Robin v. FERC*, 127 F. 3d (Fifth Cir. 1997), *reh'g denied* (February 2, 1998), *order on remand*, 87 FERC ¶ 61,384 (1999), *order denying reh'g*, 92 FERC ¶ 61,072 (2000), *order denying stay*, 92 FERC ¶ 61,217 (2000).

II. Requests for rehearing

A. Whether the abandonment of the North Padre and Central Texas facilities is in the public interest.

1. Interests of shippers and the public

Indicated Shippers state that the Commission's finding that it has no discretion to withhold authorization for the transfer of facilities, when it believes that the primary function of the facilities is gathering, is not correct.[14] Indicated Shippers state that Section 7 of the NGA makes clear that the Commission's first duty is to protect the interests of shippers and the public, rather than to accommodate Transco's and WGP's corporate objectives.

Indicated Shippers point out that the abandonment would remove certain receipt points from those available to IT-feeder shippers that ship under Transco's tariff to FT shippers. Indicated Shippers state that the public interest is not served by the unilateral termination or degradation of existing firm services or by the abandonment of IT-feeder facilities to an un-regulated affiliate. Indicated Shippers state that producers and other shippers have relied for decades on the Commission's regulation of the entirety of Transco's offshore pipeline system. Indicated Shippers state that the public interest is not served by undermining these expectations by reversing decades of prior regulatory practice. Further, Indicated Shippers state that dividing this operationally integrated system into separate regulated and unregulated parts is not in the public interest because it could undermine the Commission's open access policies.

Indicated Shippers state that Transco's abandonment application is grounded on the theory that, because Transco no longer provides bundled sales service, Transco's gathering services must be freed from the Commission's regulations in

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[14] 96 FERC at 61,435.

order to be able to compete with exempt gatherers. Indicated Shippers state that Transco has presented no evidence to support a finding that it has been unable to compete with non-NGA-regulated gathering companies. Indicated Shippers state that Transco is not concerned over whether it will be able to effectively compete in the marketplace with exempt gathers. Rather, Indicated Shippers state that Transco's real concern is over whether it will be able to take advantage of its existing control of the market in order to exact monopoly rents from shippers.

Commission response

We reaffirm our conclusion that the abandonment is required and in the public interest. As stated in the July 25 Order, where facilities are found to be used primarily in production or gathering, section 1(b) of the NGA directs that they be excluded from our NGA regulatory jurisdiction.[15] As further stated in the July 25 Order, the abandonment is consistent with unbundling policies of Order No. 636, and should, in the long run, promote competition.[16] Under the Outer Continental Shelf lands Act (OCSLA),[17] WGP will be prevented from discriminating against any shipper that seeks access to these facilities. Further, as noted in the July 25 Order, section 330.2 of our OCSLA regulations requires that WGP report the terms under which it provides service to its shippers.[18] The Commission will continue to employ its NGA authority to ensure that Transco's jurisdictional rates remain just and reasonable. And, Transco's existing tariff standards prevent it from acting in a discriminatory manner.[19] WGP has agreed to continue to serve Transco's existing customers

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[15] 96 FERC at 61,435.

[16] 96 FERC at 61,434-5.

[17] 43 U.S.C. 1301-1356.

[18] 96 FERC at 61, 435.

[19] 96 FERC at 61,434-5.

following the facilities' transfer. This should avoid any abrupt disruption to Transco's customers' expectations.

Independent entities engaged in different aspects of gas development, production, gathering, transporting, and delivery to end users are able to negotiate and rely on contractual capacity and scheduling commitments to guarantee the efficient movement of gas. Because we expect WGP, like all other offshore gatherers, will prove able to enter into service agreements with Transco, and any other transmission pipelines it may rely on, to take timely deliveries of its anticipated gas volumes, we see no need for Transco to retain ownership of its upstream gathering facilities to ensure the orderly flow of gas into its downstream transmission mainlines.

2. Effect on cost of moving gas to shore

Indicated Shippers complain that the July 25 Order transforms a single IT- feeder rate into rate-stacked charges for WGP's gathering and Transco's transmission services. Indicated Shippers state that without the constraint of rate regulation under the NGA, WGP will be able to charge shippers whatever the market will bear. Indicated Shippers state that there are no interconnections with other pipelines at the point at which the Commission finds that gathering ends and transmission begins, so shippers using the gathering facilities have no choice but to utilize Transco's remaining downstream IT-feeder transmission facilities to access Transco's mainline. Indicated Shippers state that it is not enough to say that the procedural safeguards of the OCSLA will adequately protect shippers from the market power of Transco and WGP.

Commission response

Prior to abandonment, shippers are effectively paying Transco a transportation rate that includes gathering. That gathering service will be unbundled and provided by WGP. WGP's acquisition of Transco's facilities will necessarily subject shippers on these facilities to both a gathering and a

transportation charge, where before such shippers were subject to a single Transco transportation rate. The Commission acknowledges that after the transfer of the facilities, shippers may pay a higher combined gathering fee and transportation charge to move gas between specific receipt and delivery points than the rate they now pay for bundled gathering and transportation service between the same points. However, this is neither inequitable nor an unwarranted rate stacking. As discussed in Order No. 636, it is appropriate to segregate and charge separate rates for separate services, rather than continue to compel shippers to pay a bundled charge for several distinct services.

The Commission will continue to employ its NGA authority to ensure that Transco's rates remain just and reasonable. Regarding WGP's facilities, although no State agency has authority, these facilities remain subject to federal oversight under the OCSLA. Though the OCSLA does not provide for rate regulation equivalent to that of the NGA, shippers are assured open and nondiscriminatory access to WGP's facilities. Onshore, and in state waters offshore, shippers on NGA-exempt facilities can appeal to state authorities to monitor WGPs' operations. In the event a shipper believes either Transco or WGP violates its statutory obligations under the OCSLA, the Commission encourages that shipper to submit a complaint to the Commission describing the alleged violation.[20]

B. Challenges to the primary function test

1. Should the Commission apply the OCSLA "feeder line" test instead.

Producer Coalition states that because of the close relationship between the OCSLA, the principal federal statute governing the OCS, and the NGA, the Commission should

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[20] 18 CFR § 385.206 (2001).

accord significant weight to legislative intent in formulating the jurisdictional test for OCS pipelines. Producer Coalition states that Congress has addressed the nature of gathering operations on the OCS in the 1978 OCSLA Amendments.[21] Producer Coalition states that, throughout the consideration of OCS pipeline issues, Congress equated "gathering" lines with "feeder" lines and concluded that such lines end where gas is "first separated, dehydrated or otherwise processed" on an OCS platform.[22] Producer Coalition states that the Commission erred in failing to accord the definition of gathering from the OCSLA Amendments of 1978 significant weight in its jurisdictional test. Producer Coalition states that the North Padre Island and Central Texas facilities are properly classified as jurisdictional transportation systems under the "feeder line" test.

Commission response

The Commission does not consider Congress' discussions of proposals to modify the OCSLA as guidance for jurisdictional distinctions under the NGA. The separate statutes, although complementary, have distinctly different scopes. The OCSLA applies to the full range of gas exploration, development, production, gathering, and transportation activities.[23] This is a broader regulatory sweep than the NGA which explicitly exempts facilities used for production, gathering, local distribution, and certain in-state transportation. It would be inappropriate to rely on definitions and terms of art indigenous to one statute to interpret and enforce the other. Accordingly, the Commission rejects the Producer Coalition's effort to use legislative history associated with the 1978 amendment to the OCSLA as a foundation to argue for a new NGA primary function test.

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[21] 43 U.S.C. 1301-1356.

[22] 43 U.S.C. § 1334(f)(2).

[23] 43 U.S.C. 1331(q).

2. Must Transco demonstrate changed circumstances

The July 25 Order stated that "a pipeline's functionalization of facilities for rate and accounting purposes does not determine the function of the facilities for purposes of jurisdiction under section 1(b) of the NGA. How pipelines historically functionalized their facilities for rate and accounting purposes does not prevent the Commission from applying the primary function test to determine the current jurisdictional status of the facilities."[24] In addition, the Commission also stated that it found "no cause to disallow Transco the right to claim its facilities perform a gathering function, when in the past it may have advocated the facilities function as transmission."[25]

Indicated Shippers state that while historical functionalization alone may not be determinative, the prior treatment of the facilities by both Transco and the Commission should be given presumptive effect in the absence of a showing of changed circumstances. Indicated Shippers state that given Transco's prior arguments to the Commission that the facilities were transmission, Transco should be estopped from now arguing that they are gathering.

***6** Indicated Shippers state that Transco has failed to show a change in circumstance that would demonstrate that the subject facilities are now gathering. Indicated Shippers state that the Commission offers no reasoned explanation why restructuring served to change the function of Transco's facilities, particularly given that the Commission's prior findings that the facilities are properly treated as transmission was made in conjunction with Transco's restructuring. Indeed,

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[24] July 25 Order at 61,436, citing *Southern Natural Gas Company, et. al.*, 79 FERC ¶ 61,076 at 61,379 (1997).

[25] *Id.*

Indicated Shippers state that Transco itself previously argued that restructuring served to reinforce the fact that all of its pipeline facilities provide a transmission function.

Indicated Shippers state that the Commission's decision here to change the pre-existing functionalization of certified facilities in the shallow waters of the OCS is in direct conflict with the OCS Policy Statement that indicates that the Commission would preserve the existing status of interstate pipeline facilities in the shallow water of the OCS.

Commission response

The OCS Policy Statement was explicit that "existing interstate pipelines and gathering facilities would retain their status barring some change in circumstances."[26] Nevertheless, the OCS Policy Statement must be read in light of the subsequent opinion in Sea Robin v. FERC, which determined that nonphysical factors such as ownership and prior certification are considerations secondary to physical factors.[27] In any event, the OCS Policy Statement anticipates that facilities may be reclassified in response to changing circumstances. The July 25 Order accepted Transco's claim that reclassification is merited as a response to Order No. 636. As the July 25 Order noted, after Order No. 636:

> numerous interstate pipeline companies found portions of their system's facilities were no longer required in order to provide certain certificated services. Where we found such facilities were employed to gather gas supplies needed to ensure a pipeline's capability to fulfill

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[26] Gas Pipeline Facilities and Services on the Outer Continental Shelf - Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act, 74 FERC ¶ 61,222 at 61,757 (1996), *order dismissing reh'g*, 75 FERC ¶ 61,291 (1996) (OCS Policy Statement).

[27] 123 F.3d at 371.

merchant sales obligations, a function that is no longer offered, we permitted pipelines to abandon such facilities.[28]

Second, Order No. 636 aside, a pipeline company can submit an abandonment application at any time, and the Commission will consider the reasons presented for requesting a review of the company's facilities' classification. We have acknowledged that the facilities were constructed, owned, and operated by Transco, historically an NGA-regulated interstate transportation provider. Nevertheless, we found that changed circumstances, principally Transco's reorganization in response to Order No. 636, tempered this indicator that the facilities were dedicated to interstate transportation.

3. Does the Central point of aggregation factor create a single factor test

As stated earlier, in Sea Robin, the Commission reformulated the modified primary function test adding a new "centralized aggregation point" factor for determining the jurisdiction of facilities on the OCS.

In Sea Robin the Commission found that gathering ends and transmission begins at the point where two or more segments of an OCS pipeline join for the last time and a single line moves natural gas towards shore.[29] The Commission refers to this as the "centralized collection point," or "central aggregation point," which is the point at which the gas collection/aggregation process on an OCS interstate pipeline ends.

Indicated Shippers complain that the Commission's analysis in Sea Robin is inherently flawed. Indicated Shippers state that this new test permits the Commission to find a point on a

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[28] 95 FERC ¶ 61,337 at 62,232 (footnote omitted).

[29] *Sea Robin*, 87 FERC at 62,430-431.

pipeline where the largest diameter pipeline on the system begins or where all upstream lines converge, and to designate that point as the demarcation point where gathering ends and transportation begins. Indicated Shippers state that this test would essentially eliminate any evaluation of the physical, geographical, and operational factors traditionally considered by the Commission in distinguishing gathering from transportation. Indicated Shippers state that in place of the primary function test, Sea Robin essentially establishes the very type of bright line test for which the Commission was admonished by the Fifth Circuit.[30] Indicated Shippers state that under this test the Commission would look for the central point on a pipeline system without reference to the nature of the upstream facilities and their relationships with producers' wells and other facilities.

Producer Coalition makes a related argument that because three of the factors contained in the modified primary function test produce three mutually exclusive jurisdictional results, the Commission, by necessity, must select one factor to predominate in order to reach a jurisdictional determination. Producer Coalition state that if the Commission gives principal emphasis to the "behind the plant" location of facilities, all OCS facilities will be declared non-jurisdictional, because all processing plants downstream of OCS pipelines are located onshore.[31] Alternatively, Producer Coalition state that if the Commission gives principal emphasis to length and diameter of the pipeline, most major OCS systems will be found jurisdictional. Third, Producer Coalition state

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[30] Citing, *EP Operating Co. v. FERC*, 876 F.2d 46 (5th Cir. 1989).

[31] Because of this fact, Producer Coalition state that the Commission has effectively disregarded the behind-the-plant factor in determining the jurisdictional status of OCS facilities. Sea Robin II, 87 FERC 62,428; Enron Gulf Coast Gathering, 95 FERC ¶ 61,318; *Trunkline Gas Company, et al.*, 95 FERC ¶ 61,337 (2001); *and Seahawk Transmission Co.*, 95 FERC 61,342 (2001).

that if the Commission relies on the "central point of aggregation factor," the great bulk of OCS pipelines will be found non- jurisdictional except for the lines that run from the last major intersection offshore to the onshore terminus of a system. Producer Coalition state that while the other factors contained in the modified primary function test, i.e., (i) location of wells along all or part of the facility; (ii) geographic configuration; (iii) line pressure; and even (iv) the nature of the company that owns and operates the facilities-can be interpreted in a manner to support each of the above jurisdictional results, the results themselves cannot be reconciled with each other. Producer Coalition reason that use of the modified primary function test necessarily involves the selection of one dominant factor, which is determinative of the outcome. Producer Coalition state that that factor, however, becomes the "bright line" standard, which runs afoul of the Fifth Circuit's conception of reasoned decision-making.

Commission response

The above line of arguments largely represents a collateral attack on the Commission's reasoning in Sea Robin and is rejected for that reason. In addition, Indicated Shippers and Producer Coalition misread the July 25 Order. For both the Sea Robin and Transco systems, all relevant criteria of the Farmland test, as modified with respect to offshore facilities, were afforded appropriate consideration. In this case, not all factors pointed to the same primary function—a result commonly encountered in applying our multi-factor test—thereby compelling the Commission to weigh each factor to balance the conflict presented. In the July 25 Order, in addition to the location of points of aggregation, the Commission found that the configuration of the facilities, the lack of compression, and the size and scope of the pipelines also demonstrated a gathering function.[32] The Commission found

[32] July 25 Order at 61,440-441.

that the absence of processing plants was of little value in guiding the determination on the primary function of the facilities.[33] Although the Commission did identify a single, central point of aggregation, the primary function finding did not rest solely on this feature (or on any other single factor) of the system. The claim that under our primary function test, the Commission is compelled to select a single factor and let it dominate to determine jurisdiction, is rejected.

C. Challenges to the application of the primary function test

1. Configuration

Indicated Shippers state that even if the Sea Robin "central point of aggregation" analysis is lawful, the Commission's selection of the North Padre Island Block 956 and Central Texas Block 538 as the demarcation points is inappropriate. Indicated Shippers states that Maps 11W and 4W fail to reflect the many smaller pipeline facilities forming "Y" configurations along the North Padre and Central Texas facilities and going out to the actual wells. Indicated Shippers state that the Commission should not ignore the configuration of these upstream facilities, which aggregate gas and provide the gathering function on the system. Indicated Shippers state that the facilities downstream of these smaller lines should be treated as transmission.

Indicated Shippers state that the location of wells, for the most part, appear to be remote from Transco's facilities. Indicated Shippers state that production is brought to Transco in smaller gathering lines. Accordingly Indicated Shippers state that, the gathering function is provided by other parties, whose facilities bring gas to Transco's trunk lines. For example, Indicated Shippers state that the map of the North Padre facilities shows numerous wells, purportedly served by

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[33] *Id.*

Transco's facilities, that are located off Transco's lines.[34] Indicated Shippers state that likewise the map of Central Texas facilities shows numerous wells, purportedly served by Transco's facilities, that are located off Transco's lines.[35] Although Indicated Shippers agree with the Commission's finding that this alone would not disqualify the lines from a finding of gathering, Indicated Shippers argue that this is yet another piece of evidence that supports a finding that the subject facilities are transmission and not gathering.

Commission response

In Sea Robin, the Commission took note of the court's observation that, while the task in a case may be difficult, the Commission must squarely address the fact that the demarcation point between gathering and transmission may be located at a point internal to the overall system.[36] The Commission explained that the most logical demarcation point may be the "coincidence of several smaller lines at a centralized location where the gas carried is delivered into a single, larger-diameter line for further delivery to market."[37] As noted by Indicated Shippers, for every offshore system, there are multiple Y junctions, from the first offshore interconnection point to the junction at which the line furthest seaward is tied back in. The task then is to determine which of these several Y interconnects may merit the distinction of being the point of aggregation at which gathering ceases and transmission starts. A primary function review of the traits of all potential legs and trunks is required.

As to the North Padre facilities, the Commission found that the North Padre Island Block 956, where the 10-inch and 20-

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[34] *See* Abandonment Application, Exhibit B (map 11W).

[35] *See* Abandonment Application, Exhibit B (4-w).

[36] 92 FERC ¶ 61,072 at 61,290.

[37] 92 FERC ¶ 61,072 at 61,290.

inch legs, which gather the gas, converge to form a single 24-inch line that transports the gathered gas onshore . . . functions as an aggregation point . . . indicating a demarcation of gathering and transmission functions."[38] Similarly, the Commission found that Brazos Area Block 538 platform, where the 6-to 30-inch lines converge and feed into the 30- and 36-inch lines that move the gas onshore, is the central point of aggregation on the Central Texas System.[39] Although, not exhibiting as strong an indication of a marked change as was the case in Sea Robin,[40] the Commission found that Transco's North Padre Island Block 956 and Brazos Area Block 538 platform functioned as aggregation points. The configuration of these points implied a transition from gathering to transmission, a finding that was accepted only after applying the multi-factor methodology to the rest of Transco's facilities.

2. Size

The North Padre facilities to be abandoned consist of 3.83 miles of 10-inch pipeline and 18.79 miles of 20-inch pipeline. The Central Texas facilities to be abandoned consist of 270.32 miles of pipeline: over 41 miles of 30-inch pipeline, over 23 miles of 24-inch pipeline and over 116 miles of 20-inch pipeline.

Indicated Shippers state that although *EP Operating Co. v. FERC*,[41] stands for the proposition that the Commission should not improperly overemphasize the length of the

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[38] July 25 Order at 61,440.

[39] July 25 Order at 61,441.

[40] In Sea Robin, the central point of aggregation was a manned offshore platform at which two smaller lines merged into a single larger line, significant compression facilities were located on the platform, and the platform was situated as a point geographically central to the Sea Robin system.

[41] 876 F.2d 46 (5th Cir. 1989).

pipeline in its primary function analysis, length is still an important factor to consider. Indicated Shippers complain that in the July 25 Order, the Commission failed to take into account the overall length of the pipeline facilities in its determination that the Central Texas facilities perform a gathering function. Indicated Shippers argue that the North Padre and Central Texas facilities have the size and other physical characteristics that support a finding that they provide a transmission function.

Indicated Shippers note that out of a combined 292.94 miles of pipeline at issue, roughly 286 miles of the pipeline consist of pipe with a diameter equal to or greater than 12 inches. Indicated Shippers state that Seahawk Shoreline System,[42] illustrates that 12-24 inch pipeline facilities can qualify as transmission facilities. Indicated Shippers state that the subject lines are appropriately sized not to gather the large volumes of gas, but rather to transport the large volume of gas. Likewise, Indicated Shippers state that it is very common for wells to be located along transmission lines. Therefore, Indicated Shippers state that the presence of wells alone should not have an impact on the jurisdictional status of the North Padre and Central Texas facilities.

Commission response

The Commission has adopted no bright line test regarding the size of jurisdictional offshore facilities. Although size generally correlates with function, large offshore facilities need not be summarily disqualified from gathering status if the other characteristics of the facilities are indicative of a gathering function.[43] Facilities as large as typical transmission

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[42] 93 FERC ¶ 61,097 (2000) *order denying reh'g*, 95 FERC ¶ 61,342 (2000).

[43] *See Amerada Hess*, 52 FERC P61,268 (1990) (discussion of and response to *EP Operating v. FERC*, 876 F.2d 45 (5th Cir. 1989). *See also Viosca Knoll*, (finding a relatively long, large line gathering).

lines may nevertheless be found to be gathering when other primary function factors demonstrate characteristics consistent with gathering.[44] Likewise following review of the Farmland factors, we have also determined that systems smaller than these perform a transmission function.[45]

In this case, the Commission applied the several factors of the primary function test. Not all factors were found to be relevant or uniform, and certain factors exhibited more value or weight than others. The subject lines' large diameters, a usual indicator of a transmission function, was outweighed by other characteristics denoting a gathering function. The Commission affirms the prior determination that on balance the factors indicate that the facilities to be abandoned perform primarily a nonjurisdictional gathering function.

3. Pressure

Indicated Shippers argue that the pressure ranges of the subject facilities, between 750 and 900 psig for North Padre facilities and between 725 and 1,200 psig for Central Texas facilities, also indicate a transmission function. Indicated Shippers state that these pressure ranges reflect neither the very high nor low operating pressures frequently seen in gathering lines. Indicated Shippers state that the absence of compression does not undermine this view: it simply reflects that compression was unnecessary, and sheds no light on whether the facilities are gathering or transmission.

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[44] Offshore, a 28-inch diameter line has been found to be gathering. Exxon Corporation, 45 FERC P61,436 (1988). However, that diameter was found in 9.5, 7.9, and 6.1 -mile segments of a 36.7-mile system that was producer owned, carried only sour gas, included no compression, and performed production as well as gathering.

[45] *See, e.g., Louisiana Intrastate Gas Corporation*, 69 FERC ¶ 61,022 (1994) (a system composed of 1.34 miles of 4-inch diameter pipe and 21.94 miles of 16-inch diameter pipe that serves to carry gas from OCS production areas to shore).

Commission response

There is no compression located along the North Padre or Central Texas facilities, which means that the systems operating pressures are a function of the wellhead pressures. The wellhead pressures act to push the gas through the facilities, which is typical of a gathering function, unlike compression, which is typical of a transmission function. While these pressures would indicate a transportation function onshore, they must be viewed, here, in the offshore context. These pressures are consistent with the nature of offshore production and comparable to operating pressures of other offshore facilities found to be gathering.[46] Accordingly, the Commission affirms the prior determination that the pressure factors indicate that the facilities to be abandoned perform primarily a nonjurisdictional gathering function.

4. Shallow water factor

Indicated Shippers point out that the OCS Policy Statement[47] provides that new facilities located in water depths of 200 meters or greater will be presumed to be gathering.[48] Indicated Shippers state that the Commission failed to give any weight to the fact that the North Padre and Central Texas facilities are located in the shallow waters of the OCS.

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[46] *See, e.g., Northern Natural Gas Company*, 93 FERC ¶ 61,101 (2000) (offshore facilities operating at pressures between 1,050 and 1,200 psig found gathering) and *Tarpon Transmission Company*, 78 FERC ¶ 61,278 (1997) (offshore facilities operating at pressures between 1,100 and 1,250 psig found gathering).

[47] Gas Pipeline Facilities and Services on the Outer Continental Shelf - Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act, 74 FERC ¶ 61,222 (1996), *order dismissing reh'g*, 75 FERC ¶ 61,291 (1996) (Policy Statement).

[48] *Id.* at 61,757.

Commission response

As noted in the July 25 Order, the OCS Policy Statement added a new factor to the primary function test concerning facilities that are designed to collect gas produced in water depths of 200 meters or more.[49] The OCS Policy Statement creates a presumption that these deep water facilities are gathering facilities up to the point or points of interconnection with the interstate pipeline grid. There is no corollary rebuttable presumption that facilities located in shallow water are transmission. Rather, the Commission considers a facility's location in shallow water as one among several criteria in assessing the primary function. While almost all NGA-regulated pipe is located in shallow water, approximately half of all the facilities found in shallow water are NGA-exempt production and gathering facilities. Accordingly, a particular facility's placement in shallow water, standing alone, is a poor predictor of that facility's primary function (in contrast, in deep water, almost all facilities are engaged in production or gathering). The shallow water location must be viewed in the context of a facility's other characteristics in order to reach any meaningful assessment of its primary function. In this case, the shallow water location of the subject facilities was not as substantial a factor as the facilities' other characteristics.

5. Integrated Pipeline System

Indicated Shippers believe that the nature of Transco's integrated pipeline system provides strong evidence in support that the primary function of Transco's North Padre and Central Texas facilities continue to be transmission. Indicated Shippers state that there is no reasoned basis to conclude that the primary function of one portion of an integrated system is gathering, and the other is transmission.

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[49] July 25 Order at 61,437.

Commission response

In Sea Robin the Commission rejected the position that the Commission should consider an entire pipeline system gathering if the "integrated" nature of the system, as a whole, is designed to transport gas from production areas to onshore locations. The Commission explained that such a finding would violate the Commission's responsibility to draw jurisdictional lines, even when the end of gathering is not easily located, as for example, when it occurs at a point internal to an overall system.[50] For the same reason, we reject the contention that the integrated nature of Transco's system precludes us from finding that a portion of the system is gathering.

6. Historical certification and business purpose

Indicated Shippers argue that the Commission erred in its conclusion that the historical certification of Transco's facilities is not relevant to the current primary function of the facilities and in failing to give due weight to the business purpose of the subject facilities. Indicated Shippers are in agreement with the Commission in that the "business purpose" of the subject facilities is only one factor to consider in determining the primary function of the North Padre and Central Texas facilities. However, Indicated Shippers argue that because the business purpose of the pipeline provides strong evidence of a pipeline's functionalization, it should be considered a central factor. Indicated Shippers argue that where the owner of pipeline facilities is in the business of transportation for hire, and has historically operated the pipeline as an integrated interstate pipeline system, the primary function of the pipeline is most likely transmission.

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[50] 92 FERC ¶ 61,072 at 61,290.

Commission response

In the past, when a pipeline applied for a certificate to construct facilities, the Commission did not inquire into the pipeline's prospective use of the facilities before issuing the certificate. Consequently, many facilities that actually may perform a gathering function originally were constructed under NGA section 7 certificates. Therefore, until the Commission actually scrutinizes the facilities under the primary function test, the actual jurisdictional status of the facilities cannot be definitively determined.[51]

The offshore facilities at issue here were installed under NGA certificate authority and have continued to be functionalized by Transco as transmission for many years. Nonetheless, in making jurisdictional determinations on the OCS, and indeed, onshore as well, the physical characteristics of the particular pipeline systems are the more significant factors, and each determination must be made on the basis of its own specific fact situation.[52] Here, such non-physical aspects are not compelling enough to overcome the overwhelming physical evidence

D. Challenge to the rate adjustment

Transco seeks rehearing of the requirement that it adjust its rates to remove the cost of the North Padre and Central Texas facilities in its current rate proceeding in Docket No. RP01-245-000.[53] Pending the Commission's action on rehearing, Transco also requests that the Commission grant a limited stay of the July 25 Order's rate adjustment requirement. As discussed below, the request for rehearing on this issue is granted. Therefore, the motion for stay is moot.

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[51] *See*, CNG Transmission Corporation, 67 FERC P61,330, at 62,177 (1994).

[52] *Sea Robin*, 127 F.3d 365 at 371.

[53] 96 FERC at 61,442, Ordering paragraph E.

Transco states that having now received the Commission's Order granting abandonment and transfer, Transco and WGP must make the modifications necessary to permit operation of these facilities on a stand-alone basis, and must negotiate contracts to govern post-spin down services on these facilities. Transco states that for a variety of reasons, it does not believe that such transfer will close until well into 2002, at the earliest.

Transco states that the July 25 Order contains no findings under either NGA Sections 4 or 5 that the North Padre and Central Texas facilities will not be in service through the test period in Docket No. RP01-245-000, or that Transco's rates to be effective September 1, 2001, will be unjust or reasonable. Transco states that Section 5(a) requires such findings before the Commission may lawfully adjust a pipeline's rates.[54] Transco states that to require Transco to remove the cost of these facilities from jurisdictional rates while such facilities continue to render jurisdictional service would be unlawful under these NGA sections, which require that a pipeline be afforded an opportunity to earn a fair return on its investment in jurisdictional facilities and to recoup its costs in rendering jurisdictional service.[55]

KeySpan, et al., argue that the timing of the transfer is a matter within the control of the contracting parties and Transco's customers should not be required to continue to pay for facilities that are not necessary to provide their jurisdictional services simply because the transfer has not occurred as expeditiously as Transco had planned.

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[54] 15 U.S.C. 717d(a). Transco cites *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1578-79 (D.C. Cir. 1993).

[55] Transco cites *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

Commission response

In its application in Docket No. CP01-34-000, Transco proposed to transfer the subject facilities to WGP effective on the last business day of the calendar month following the calendar month of the issuance of [the July 25 Order], or at a mutually agreeable date thereafter. Thus, the transfer was expected to occur as early as August 31, 2001. However, the transfer did not take place at that time. The test period in Transco's current general rate proceeding in Docket No. RP01-245-000 expired on August 31, 2001, and the proposed rates became effective on September 1, 2001.[56] The

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[56] On March 1, 2001, in Docket No. RP01-245-000, Transco filed revised tariff sheets to reflect a general NGA section 4 rate increase. The Commission exercised its discretion to accept and suspend the rates to take effect on September 1, 2001, subject to conditions and subject to refund and the outcome of a hearing. Transcontinental Gas Pipe Line Corporation, 94 FERC ¶ 61,360 (2001). On August 31, 2001, in Docket No. RP01-245-003, Transco filed a motion to place the suspended tariff sheets into effect on September 1, 2001. Among other things, Transco stated that it had eliminated the costs associated with facilities not in service as of August 31, 2001, but had not reflected any adjustments in the compliance rates for the subject facilities for which abandonment was granted. By order issued September 27, 2001, the Commission accepted the revised tariff sheets to be effective September 1, 2001, subject to refund, the outcome of the hearing established in Docket No. RP01-245-000, and the certificate proceedings in Docket Nos. CP01-34-000, CP01-103-000 and CP01-368-000. Transcontinental Gas Pipe Line Corporation, 96 FERC ¶ 61,345 (2001) (September 27 Order). The Commission also directed Transco to file revised tariff sheets, within 15 days of the date of issuance of that order, reflecting the removal of the costs of the facilities abandoned in the certificate proceedings.

On October 9, 2001, in Docket No. RP01-245-005, Transco filed a Request For Clarification Or, In The Alternative, For Rehearing, of the September 27 Order (October 9 Request). Transco also requested a limited stay that sought an extension of time within which to comply with the September 27 Order. The motion states that because Transco's books and records would have to be reconstructed in order to calculate the costs required by the Commission's Order, compliance is not possible within

Commission's regulations only require removal of the costs of facilities that will not be in service as of the end of the test period.[57] Hence, the Commission's regulations and ratemaking policies did not require that Transco remove the cost of those facilities and costs from the rates that went into effect on September 1, 2001, subject to refund. Accordingly, rehearing is granted. The order in Docket No. RP01-245-005, issued concurrently, directs Transco to refile its rates to reflect the removal of the North Padre Island facilities, effective December 1, 2001.

Nonetheless, the Commission's finding in the July 25 Order that Transco must remove the costs of the facilities that it will abandon from its prospective rates was grounded on the sound ratemaking principal that just and reasonable jurisdictional rates cannot be based on the costs of facilities not owned by the pipeline, not in service, and not needed to provide service to jurisdictional customers. Thus, it would seem unjust and unreasonable for Transco to continue to charge rates designed to afford Transco the opportunity to recover the cost of and earn a fair return on an investment in the subject facilities at such time that it no longer owns them and no longer uses them to provide jurisdictional service.

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the 15-day deadline. On November 6, 2001, an extension of time was granted until 30 days after the Commission acts on Transco's October 9 Request. The Commission order in Docket No. RP01-245-005 is being issued concurrently with the instant order.

[57] Section 154.303(c)(2) of the Commission's regulations states:

> When a pipeline files a motion to place the rates into effect, the filing must be revised to exclude the costs associated with any facilities that will not be in service as of the end of the test period . . . At the end of the test period, the pipeline must remove from its rates costs associated with any facility that is not in service. . . .

97 FERC P 61,296, 2001 WL 1631914 (F.E.R.C.)

On December 10, 2001, Transco filed a letter informing the Commission that the transfer of the North Padre Island facilities became effective on December 1, 2001; however, the transfer of the Central Texas facilities had not yet been implemented. Accordingly, as to the Central Texas facilities not yet abandoned as of the date of this order, we shall direct Transco to show cause, within 30 days from the date of issuance of this order, why it should not be required to file revised tariff sheets and supporting workpapers containing replacement rates reflecting the removal of all costs associated with the abandoned Central Texas facilities, 30 days prior to the effective date of the transfer of those facilities.

III. Request for clarification

Indicated Shippers ask that the point at which gathering ends and transmission begins be better identified than in the July 25 Order. Indicated Shippers state that simply identifying a particular platform is not sufficient because a more specific identification becomes critical for new interconnections to the platform. Indicated Shippers state that if Transco deems the interconnect to be upstream of the point of demarcation between gathering and transmission, the pipeline and its affiliate could argue that a gathering fee must be paid for a very short haul of gas from one point on the platform to another. In order to avoid this sort of rate stacking, Indicated Shippers request that the Commission clarify that all of the facilities at the platform at which gathering ends are to be treated as transmission; and, only facilities upstream of the platform should be gathering. In this way Indicated Shippers state that, there will be no question that new interconnects at the platform will not bear a gathering charge for short hauls on the platform.

Commission response

The Commission clarifies that facilities upstream of the jurisdictional demarcation platform have been found to be gathering, and facilities downstream have been found to be transmission. However, the Commission denies the request to clarify that all of the facilities at the jurisdictional demarcation platform are to be treated as transmission. An OCS platform may be constructed to serve many functions, such as an aggregation point for numerous lines, and/or to provide separation, dehydration, and other production and transmission services. Basically, facilities on the platform involved with bringing gas to the platform are gathering and facilities involved in sending gas toward shore are transmission. Facilities that separate or dehydrate are also performing production and gathering functions. Although unusual in offshore situations, compression facilities would most likely be involved in transmission. New interconnections to the platform should be functionalized accordingly.

The Commission orders:

(A) The requests for rehearing are granted or denied as discussed in this order.

(B) Pursuant to section 5 of the Natural Gas Act, Transco is directed to show cause, within 30 days from the date of issuance of this order, why it should not be required to file revised tariff sheets and supporting workpapers containing replacement rates reflecting the removal of all costs associated with the Central Texas facilities, 30 days prior to the effective date of the transfer.

(C) Within 15 days of the issuance date of this order, WGP must file an OCSLA Reporting Form and the conditions of service for each shipper served with respect to the acquired facilities (and the services rendered through those facilities) and continue to do so

thereafter, in accordance with section 330.2 of the Commission's regulations.

By the Commission.

(SEAL)

Linwood A. Watson, Jr.,
Acting Secretary.

APPENDIX H

FEDERAL ENERGY REGULATORY COMMISSION
Commission Opinions, Orders and Notices

[Filed August 31, 2001]

Docket Nos. CP01-368-000 and RP01-245-000
Docket No. CP01-369-000

Transcontinental Gas Pipe Line Corporation
Williams Gas Processing-Gulf Coast Company, L.P.

ORDER AUTHORIZING ABANDONMENT AND DETERMINING JURISDICTIONAL STATUS OF FACILITIES

Before Commissioners: William L. Massey, Linda Breathitt, Pat Wood, III and Nora Mead Brownell.

On May 18, 2001, Transcontinental Gas Pipe Line Corporation (Transco) submitted an application in Docket No. CPO 1-368-000, pursuant to section 7(b) of the 'Natural Gas Act (NGA), seeking Commission approval to abandon certain facilities located offshore and onshore Louisiana (Central Louisiana facilities) to its gathering affiliate, Williams Gas Processing-Gulf Coast Company, L.P. (WGP). On the same date, WGP submitted a petition in Docket No. CPO 1-369-000 requesting that the Commission declare that the facilities it proposes to acquire from Transco will, upon abandonment by transfer to WGP, be gathering facilities exempt from the Commission's NGA jurisdiction.

For the reasons discussed below, we will approve Transco's requested abandonment, in part, and declare a portion of the facilities to be gathering. The facilities not found to be gathering will remain transmission.

I. Background and Proposal

The requested abandonment is part of an ongoing corporate-wide restructuring by The Williams Companies, Inc. (Williams), corporate parent of Transco and WGP, to abandon and transfer (spindown) gathering facilities from Transco and the other Williams-affiliated interstate pipelines to nonjurisdictional gathering companies. The facilities under consideration in these dockets were part of a more comprehensive gathering spindown request filed by Transco and WGP in Docket Nos. CP96-206-000 and CP96-207-000.[1] Those applications were dismissed without prejudice to the applicants' filing another proposal addressing discrete portions of the facilities. Transco states that it has reviewed its gathering facilities on a system-by-system basis under the Commission's primary function test, as reformulated following the courts direction in the Sea Robin Pipeline Company (Sea Robin) proceeding.[2] Transco states that this application is part of an effort to spindown gathering facilities under the principles of Sea Robin.

Transco states that most of the facilities comprising the Central Louisiana Gathering System are the subject of various NGA section 7(c) certificates issued by the Commission. Transco states that at the time they were acquired or constructed, these gathering facilities were used almost exclusively to deliver system supply gas to support bundled sales services. Transco states that under that historic structure, Transco did not have a need to precisely distinguish between jurisdictional transmission and exempt gathering facilities.

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[1] *Transcontinental Gas Pipe Line Corporation*, 76 FERC ¶ 61,317 (1996), *order denying reh'g*, 95 FERC ¶ 61,396 (2001).

[2] 71 FERC ¶ 61,351 (1995) (Sea Robin I), *order on reh'g*, 75 FERC ¶ 61,332 (1996), *remanded Sea Robin v. FERC*, 127 F. 3d 365 (5th Cir. 1997), *reh'g denied* (February 2, 1998), *order on remand*, 87 FERC ¶ 61,384 (1999) (Sea Robin II), *order denying reh'g*, 92 FERC ¶ 61,072 (2000), *order denying stay*, 92 FERC 61,217 (2000).

Accordingly, the fact that many of the subject facilities were constructed pursuant to NGA certificates is not an indication of whether the facilities actually qualify for exempt gathering status under NGA section 1(b). Transco states that under the Commission's current reformulated primary function test, the Central Louisiana facilities perform primarily a gathering function.[3]

Transco also requests authorization to abandon services under 17 existing individually certificated X-rate schedules.[4] Transco states that no gas has flowed under any of the X-rate schedule service agreements since 1993. Transco also seeks authority to partially abandon 14 Part 284 services agreements insofar as they pertains to specific receipt points on the Central Louisiana facilities.[5] Transco states that upon abandonment and transfer of the requested facilities to WGP, the referenced receipt points will no longer be available to be used by shippers under the affected blanket services or as a balancing point under a Pipeline Interconnect Balancing Agreement. Transco states that upon approval of this application, Transco will amend affected service agreements and file the necessary conforming changes to its FERC Gas Tariff, such as the termination of tariff sheets and removal of references to the abandoned points/facilities.

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[3] *See WGP's Petition at Sections VII and VIII, appeal docketed Exxon-Mobil, et. al., v. FERC*, Civ. No. 00-1355 (D.D.C. filed Aug. 2, 2000).

[4] The following rate schedules are proposed to be abandoned: X-35, X-78, X-128, X-152, X-157, X-197, X-215, X-263 (Florida Gas), X-43, X-159 (Koch Gateway), X-97, X-223 (Columbia Gas), X-257 (Columbia Gulf), X-143 (ANR), X-170 (Northern Natural), X-256 (Conoco/DuPont), X-261 (TGX Corp.).

[5] The following Part 284 firm agreements are to be partially abandoned: BG&E, Brooklyn Union, City of Richmond, Corning Natural Gas Corp., East Ohio Gas Company, National Fuel Gas Dist. Corp., Niagara Mohawk Power Corp., PPL Gas Utilities, Providence Gas Co., Public Service N. Carolina, Rochester Gas & Electric, Virginia Natural Gas, Washington Gas Light, and Motiva Enterprises, LLC.

Transco proposes to transfer the subject facilities to WGP under a Transfer and Assignment Agreement dated February 19, 1996, as amended on December 29, 1997, at net book value at the time of closing, resulting in no gain or loss to Transco. Following a Commission order approving abandonment acceptable to Transco and WGP, Transco proposes to transfer the subject facilities to WGP effective on the last business day of the calendar month following the calendar month of the issuance of such order, or at a mutually agreeable date thereafter. Transco will notify the Commission within ten business days of the transfer of the facilities. Transco states that if this abandonment is approved prior to Transco's next general NGA section 4 rate case filing, then in accordance with Transco's rate settlement in Docket Nos. RP97-71-000, *et al.*, Transco will make a rate filing as necessary to reflect the spindown after Commission approval. Transco states that the depreciated net book value of these facilities is approximately $5,493,381 as of April 30, 2001.

Transco states that the application to abandon and transfer the central Louisiana facilities is consistent with Williams' ongoing corporate restructuring, whereby the gathering facilities of Williams' interstate pipelines have been unbundled and spundown to companies focused on providing gathering services. Transco states that the spindown of gathering facilities by Williams' interstate pipelines, other than Transco, is largely complete. The Commission has approved those prior spindowns, finding that they will serve the public interest and are consistent with the Commission's industry restructuring and pro-competitive policies.[6] Transco states that for the same reasons, the Commission should likewise approve the instant application.

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[6] *Transcontinental Pipe Line Corporation*, 96 FERC 61,115 (2001); *Transcontinental Pipe Line Corporation*, 96 FERC 61,118 (2001).

Transco states that WGP's parent, Williams Field Services Company, is currently operating the subject facilities as Transco's agent and WGP plans to negotiate post-spindown service agreements with all shippers.[7] Transco states that WGP will continue to operate the facilities in an open and nondiscriminatory manner. In that regard, while the spun-down facilities will not be subject to the Commission's NGA jurisdiction, the facilities are subject to the Outer Continental Shelf Lands Act (OCSLA)[8], which mandates that all Outer Continental Shelf (OCS) pipelines provide "open and non-discriminatory access" to their OCS facilities.[9]

In prior spindown cases, the Commission has required the pipeline to adopt tariff provisions ensuring that it will not provide any undue preference to affiliates. Transco states that Section 36 of the General Terms and Conditions of Transco's tariff already includes such provisions.

II. Description of facilities

Transco states that the Central Louisiana facilities are located in the East Cameron and Vermilion Areas, offshore Louisiana, and in Acadia, Jefferson Davis, and Vermilion Parishes, Louisiana. Transco states that both the offshore and onshore facilities gather and move gas into either of two adjacent nonjurisdictional processing plants (the Cow Island Processing Plant owned by El Paso Field Services Company and the Vermilion Processing Plant owned by Williams Field Services-Gulf Coast Company, L.P.) located in Vermilion Parish, Louisiana for processing and redelivery into Transco's system.

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[7] Transco states that in previously filed spindown abandonment applications in Docket Nos. CP01-34-000 and CP01-103-000, Transco erroneously stated that WGP itself acts as Transco's agent. Transco states that the agency relationship indicated above is correct.

[8] 43 U.S.C. § 1331, *et seq.*

[9] 43 U.S.C. § 1334(f)(l)(A).

The Central Louisiana facilities consist of approximately 380.255 miles of 2- inch to 24-inch pipeline, as follows:

0.74 miles of 2-inch pipeline
0.63 miles of 3-inch pipeline
6.996 miles of 4-inch pipeline
41.411 miles of 6-inch pipeline
35.674 miles of 8-inch pipeline
13.695 miles of 10-inch pipeline
79.336 miles of 12-inch pipeline
17.637 miles of 14-inch pipeline
78.874 miles of 16-inch pipeline
26.283 miles of 18-inch pipeline
41.727 miles of 20-inch pipeline
37.252 miles of 24-inch pipeline

Certain segments of the Central Louisiana facilities are jointly owned by Transco and other third parties.[10] The Central Louisiana facilities proposed to be abandoned include a number of valves, meters and related appurtenant pipeline facilities located throughout the systems. These related facilities constitute an integral part of the nonjurisdictional gathering function of the facilities sought to be abandoned and are also proposed to be abandoned and declared nonjurisdictional.

III. WGP's Petition for Declaratory Order

WGP states that the Central Louisiana facilities should be declared nonjurisdictional gathering facilities because: (1) the length and diameter of the pipelines are relatively small; (2) numerous wells are located throughout the system; (3) the operating pressures are consistent with both onshore and offshore gathering; (4) all the facilities are located upstream

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[10] Transco states that CNG Transmission Corp. (now Dominion Transmission, Inc.), Columbia Gulf Transmission Co., Florida Gas Transmission Co., and Sea Robin Pipeline Co. also have ownership interests.

of the Cow Island Processing Plant; (5) the system is configured in a spine and lateral configuration, which is consistent with a gathering function; and (6) the system has no compression and its operating pressures are consistent with both onshore and offshore gathering facilities.

Interventions and Protests

Transco's application for abandonment authorization in Docket No. CPO 1-368- 000 was published in the Federal Register on June 1, 2001[11] Timely, unopposed motions to intervene were filed by companies as listed in the Appendix to this order.[12] Superior Natural Gas Corporation and Walter Oil & Gas Corporation, and the Producer Coalition filed untimely motions to intervene. We find that granting the motions to intervene out-of-time will not delay the proceeding, prejudice the rights of any party, or place an additional burden on existing parties. Accordingly, for good cause shown, we will grant the late-filed motions to intervene.[13] Consolidated Edison Company of New York (Con Ed), Indicated Shippers, Producer Coalition, the Public Service Commission of the State of New York (New York), and Superior Natural Gas Corporation and Walter Oil & Gas Corporation (Superior/Walter) filed protests. The City of Richmond, Virginia (Richmond), Public Service Company of North Carolina, Inc. (North Carolina), and the Transco Municipal Group and the Municipal Gas Authority of Georgia (collectively Municipal Group) filed comments.

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[11] 66 FR 29788.

[12] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214 (2001).

[13] 18 CFR § 385.214(d) (2001).

WGP's petition for a declaratory order in CP01-369-000 was published in the Federal Register on June 4, 2001.[14] Timely, unopposed motions to intervene were filed by companies as listed in the Appendix to this order.[15] Phillips Petroleum Company and Phillips Gas Marketing Company filed untimely motions to intervene. We find that granting the motions to intervene out-of-time will not delay the proceeding, prejudice the rights of any party, or place an additional burden on existing parties. Accordingly, for good cause shown, we will grant the late-filed motions to intervene.[16] Indicated Shippers, the Producer Coalition and Superior/Walter filed protests.

On July 19, 2001, Transco and WGP filed answers to the protests and comments previously filed. Although our procedural rules do not permit answers to protests, or answers to answers, we may, for good cause, waive this provision.[17] We find good cause to do so in this instance in order to insure a complete and accurate record in this proceeding.

We address the substance of the protests and responsive pleadings below.

IV. DISCUSSION

A. Abandonment

Since the facilities proposed to be abandoned were certificated to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the abandonment of Transco's certificated interests in the OCS facilities requires Commission authorization under NGA section 7(b).

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[14] 66 FR 29937.

[15] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214 (2001).

[16] 18 CFR § 385.214(d) (2001).

[17] 18 CFR § 385.213(a)(2) (2001).

Transco historically designed, constructed and operated its systems in order to perform a bundled service—purchasing and aggregating gas supplies and transporting' those supplies for sale to local distribution companies at the city gate. However, since the restructuring of the natural gas industry, Transco provides an array of unbundled services, such as transportation, storage, and fully unbundled sales services, to a wide variety of customers. In its principal role as a transporter, Transco no longer requires its extensive gathering facilities to provide gas sales. Moreover, most of Transco's sales are made at its pooling points, not at the wellhead. The abandonment will permit Transco to eliminate unnecessary expenses associated with these facilities and WGP will make more efficient use of the acquired facilities. Accordingly, for the reasons discussed below, we find that the public convenience and necessity permit Transco to abandon by transfer to WGP the portion of the Central Louisiana System found to be gathering, as discussed below.

B. Opposition to the Abandonment

Various parties oppose the abandonment arguing that the facilities have and continue to perform a transmission function, and that any transfer of facilities to WGP will result in a lack of competitive alternatives and allow WGP to wield substantial market power over shippers.

1. Impact on Existing Shippers

Indicated Shippers, an ad hoc group of companies interested in gas transported on Transco's system,[18] object that the proposal would undo decades of Commission jurisdiction

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[18] The members of the Indicated Shippers include: Amerada Hess Corporation, Amoco Production Co., BP Energy Co., Burlington Resources Oil & Gas Co. L.P., Chevron U.S.A. Inc., Conoco Inc., Exxon Mobil Corp., Occidental Energy Marketing, Inc., Shell Offshore Inc., and Texaco Natural Gas, Inc. Each of the members has also intervened separately.

over the entirety of Transco's system and may permit the Transco corporate family to impose rates in excess of those previously deemed just and reasonable. Indicated Shippers object to Transco transferring a portion of its integrated system, including facilities currently functionalized as transmission, to an unregulated affiliate. Indicated Shippers also dispute the contention that maintaining these facilities as transmission hinders Transco's ability to compete with exempt gatherers, pointing out that Transco may discount its rates to compete and that Transco has failed to identify any gatherer against which it cannot effectively compete. Indicated Shippers contends that if the systems remain regulated, Transco will not be able to collect rates in excess of its maximum tariff rates. Indicated Shippers further states that in the absence of competitive alternatives, the abandonment of the Central Louisiana facilities will allow WGP to wield substantial market power permitting them to exact monopoly rents from shippers.

Con Edison requests that the Commission require that Transco present evidence as to the market value of the subject facilities and, if that value exceeds the net book value, require Transco to offset the excess against extraordinary costs underlying its proposed general rate increase in Docket No. RP01-245-000. New York argues similarly, questioning whether the transfer price is less than the fair market value of the facilities. New York contends that if pipelines are allowed to transfer valuable facilities to affiliates at prices which may be less than market value, such pipelines have waived their right to seek stranded cost recovery for any other facilities which may turn out to be uneconomic. It states that this issue should be reviewed in the context of Transco's pending rate case in Docket No. RP01-245-000. New York requests that the Commission defer consideration of this proceeding and direct Transco to file a cost and revenue impact study to be

considered in the pending rate case. Alternatively, New York requests that a technical conference be convened to discuss these issues.

Municipal Group and Richmond request that Transco's rates be adjusted under Transco's pending NGA section 4 proceeding in Docket No. RP01-245-000 to reflect the removal of the costs of the Central Louisiana facilities. If the spindown is approved after September 1, 2001, the effective date of the pending section 4 proceeding, they request that Transco be required to file a limited section 4 rate case to reflect fully the rate effects of the spindown. North Carolina argues similarly, stating that if the Commission approves the spindown proposal, regardless of the date, it should require Transco to remove these costs from its rate base prior to a final order in the pending rate case.

Producer Coalition, an ad hoc group of natural gas producers, who market gas on Transco's system,[19] suggests that the Commission require Transco/WGP to disclose the proposed rates and conditions of future service on the Central Louisiana facilities, prior to the issuance of a Commission order on the spindown. Producer Coalition disputes Transco/WGP's contention that WGP is negotiating with its customers and offering a package of services. It contends that WGP has failed to make any disclosure of the rates and terms and conditions it intends to offer. Without this advance information, Producer Coalition states that the shippers are left to assume the worst—that WGP in fact intends to exploit its market power.

Indicated Shippers also question the appropriateness of Transco abandoning numerous receipt points from the FT

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[19] This group consists of Dominion Exploration & Production, Inc., Devon Energy Corp., Forest Oil Corp., The Houston Exploration Co., Newfield Exploration Co., Ocean Energy, Inc., and TotalFinaElf E&P U.S.A., Inc.

agreements. They state that the abandonment would also delete these receipt points from those available to IT-feeder shippers that ship gas under Transco's tariff to FT shippers. Indicated Shippers states that, contrary to Transco's assertion, the public interest is not served by the unilateral termination or degradation of existing firm services or by the abandonment of IT-feeder facilities to a non-jurisdictional affiliate.

Superior/Walter offer similar arguments opposing the spin-down. They allege that the proposal is nothing more than a vehicle to significantly increase the production area rates that marketers and producers must pay over the regulated IT-feeder rates currently being charged. They also believe that the primary function of the facilities at issue remains transmission.

a. Transco and WGP Response

Transco/WGP believe that the Indicated Shippers' protest should be denied, because it is largely a collateral attack on the Commission's court-approved policy[20] favoring the spin-down of gathering facilities, which Transco/WGP contend is consistent with the Commission's unbundling policies and other pro- competitive objectives. They also contend that the Indicated Shippers' functional analysis of the facilities unduly relies on non-physical factors, such as prior certificate and rate classification, system integration, and effects on competition, ownership and business purpose, which are of little or no relevance to the jurisdictional status of facilities under NGA section 1(b). Transco/WGP respond to Superior/Walter in the same manner.

As to the issues of competitive factors and market power, Transco/WGP state that the Commission has found them

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[20] Citing *Conoco Inc. v. FERC*, 90 F.3rd 536 (D.C. Cir. 1996), *cert, denied*, 519 U.S. 1142 (1997) (Conoco); *Pacific Gas and Electric Co. v. FERC*, 106 F.3rd 1190 (5th Cir. 1997).

irrelevant in determining the function of OCS facilities.[21] Transco/WGP find it disingenuous that some of the protestors consistently oppose spindowns by interstate pipelines, while at the same time some of them enjoy non-NGA regulated status for their own OCS gathering pipelines. Transco/WGP also point out that, even in the absence of continued NGA regulation of these facilities, Indicated Shippers still will be protected by the open access and nondiscrimination provisions of the OCSLA.

As to the contention that the spindown will result in a degradation of existing transportation service because various receipt points will be deleted from certain of Transco's FT agreements, Transco/WGP state that WGP plans to negotiate post-spindown agreements with all shippers and it will operate the facilities in an open and nondiscriminatory manner.

Transco states that it is not, as suggested by New York, attempting to spindown only the most economically attractive facilities. Transco contends that its objective has been and continues to be the comprehensive spindown of Transco's gathering facilities originally proposed by Transco and WGP in Docket Nos. CP96-206-000 and CP96-207-000. However, Transco states that the Commission dismissed those applications,[22] without prejudice to Transco's and WGP's filing more limited discrete spindowns, which Transco avers it has done. Transco/WGP state that they would welcome the opportunity to implement a comprehensive spindown of all Transco facilities that perform a gathering function, as originally proposed in Docket Nos. CP96-206-000 and CP96-207-000. As to the requests that the Commission require Transco to remove from its rates the cost of the facilities to be transferred, Transco states that if the Commission approves

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[21] Citing *Louisiana Gas Co.*, 67 FERC ¶ 61,255 at 61,851 (1994).

[22] *See* n. 1, *supra*.

the spindown prior to the effective date of its next effective rate case, it will make a rate filing to reflect the spindown as approved.

Finally, Transco/WGP state that Con Ed's request (to offset the difference between the net book value and the market value of the subject facilities) should be denied as the Commission allows the transfer of facilities at net book value.

b. Commission Response

Transco, like many interstate pipelines, found after restructuring its system consistent with Order No. 636, and moving from a bundled, merchant function to an unbundled, transportation function, that it no longer needed all of its existing system facilities. The Commission routinely grants requests to abandon facilities that we determine were used to gather gas supplies in support of the merchant gas sales function a pipeline no longer offers.[23] The fact that these facilities were previously certificated is not determinative of whether the present or future public convenience and necessity allow their abandonment. Further, the fact that a certificate exists for a given facility may not be determinative of its true jurisdictional status. As we stated in CNG Transmission Corporation, "until the Commission actually scrutinizes the facilities under the primary function test, the actual jurisdictional status of the facilities cannot be definitively determined."[24] Here, we find it reasonable for Transco to seek to abandon the proposed facilities via spindown to its gathering affiliate because this is the proper forum to apply the primary function test to these facilities. We also find that the record in this proceeding is adequate for us to determine the proper function of the facilities.

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[23] See *Trunkline Gas Co.*, 95 FERC ¶ 61,337 (2001); *Natural Gas Pipeline Co. of America*, 94 FERC ¶ 61,186 (2001); and *Northern Natural Gas Co.*, 93 FERC ¶ 61,101 (2000).

[24] 67 FERC ¶ 61,330 at 62,177 (1994).

The protestors argue that existing shippers will be adversely affected by the spindown because there will be no competition and they will have to deal with an unregulated entity for the same service that they currently receive from Transco. The transfer of gathering facilities and services by interstate pipelines to nonjurisdictional entities is consistent with the unbundling policies of Order No. 636 and should, in the long run, promote competition within the gathering industry.[25] As we have noted, section 1(b) of the NGA exempts gathering from the jurisdiction of this Commission. Thus, if the primary function of facilities for which abandonment is sought is found to be gathering, the Commission has no discretion to withhold such authorization. Here, consistent with the discussion below, we are finding that a portion of Central Louisiana facilities perform a gathering function. The remainder of the facilities perform a transmission function.

Nor is the issue of competition relevant to whether or not the Commission will' regulate an affiliated gatherer's rates or terms and conditions of service after it acquires abandoned facilities. The Commission has no authority under the NGA to regulate a gatherer's rates or its terms and conditions of service.[26] We find that the separate rate structure shippers will encounter after the spindown is consistent with the unbundling principles expressed in Order No. 636, where the Commission noted that shippers are expected to pay a separate rate for each separate service they receive. The shippers, in effect, have been on notice since February 21, 1996, when Transco filed its initial application in Docket No. CP96-206-000, that it proposed to abandon, among others, the facilities at issue here. This interval of over five years has

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[25] See *Northern Natural Gas Company*, 93 FERC ¶ 61,101 at 61,273 (2000).

[26] *Conoco*, 90 F.3d at 544-53.

provided an extended transition period for these shippers to contemplate their service options in the event the abandonment of these facilities was approved.[27]

In addition, the facilities at issue here are located on the OCS and will become subject to the OCSLA upon approval of the spindown. Under the OCSLA, WGP is prevented from discriminating against any shipper that seeks access to the facilities it will acquire in this proceeding from Transco. Assuming all existing shippers using the central Louisiana facilities want to continue moving their gas via the same path, both they and WGP will have a vested interest in reaching mutually agreed upon terms and conditions for continuation of the existing service. Since the OCSLA guarantees shippers open and nondiscriminatory access to offshore facilities, WGP cannot discriminate between shippers and has incentive (fully utilized facilities) to negotiate fairly with Transco's existing shippers.

Further, we note that on April 20, 2000, in Order No. 639, the Commission issued a final rule promulgating regulations under the OCSLA to ensure that natural gas is transported on an open and nondiscriminatory basis through facilities located on the OCS. The regulations require OCS gas transportation service providers to make information available regarding their customers and conditions of service.[28] WGP will be

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[27] See *NorAm Gas Transmission Co.*, 78 FERC ¶ 61,265 at 62,128 (1997). The Commission previously conditioned the spindown or spinoff of gathering facilities on the acquiring entity's continuing to provide comparable service to existing shippers for a two-year term. This two-year time was intended to serve as a transitional period, during which shippers subject to NGA-regulated transportation service agreements could consider their options as NGA-exempt gathering customers. In Conoco, however, the court ruled that the Commission lacked jurisdiction to impose this particular condition on abandonments of facilities found to be exempt from the Commission's jurisdiction. 90 F.3d at 544-53.

[28] *See* Regulations under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer

subject to these regulations.[29] Further, Transco already has in its tariff standards of conduct for gathering affiliates that prevent it from acting in a discriminatory manner by guarding against the risk of affiliate abuse and ensuring an arms length relationship between it and WGP.[30]

In Transco/WGP's answer, WGP states that it intends to negotiate post- spindown agreements with all shippers. In the event that any shipper believes that either Transco or WGP have violated its statutory requirements under the OCSLA, or that the terms of service WGP offers any existing shipper prove inconsistent with the OCSLA's requirements, the shipper can file a complaint and the Commission will investigate any such complaint in a timely manner.[31] Since we will continue to employ our NGA authority to ensure that Transco's jurisdictional rates remain just and reasonable, we find WGP's commitment, along with the protections provided by the OCSLA, will act to ensure adequate access and service to existing customers.

As to the requests that Transco adjust its rates, we will require Transco, consistent with Section 154.303(c)(2) of our regulations, to remove the cost of the facilities abandoned and transferred here from the rates it proposes to charge in its current rate proceeding in Docket No. RP01-245-000.

Continental Shelf, Order No. 639, 65 Fed. Reg. 20354 (April 17, 2000), FERC Stats, and Regs. ¶ 31,514, at 31,539 (April 10, 2000), Order No. 639-A, 65 Fed. Reg. 47294 (Aug. 2, 2000), FERC Stats, and Regs. 31,103 (July 26, 2000).

[29] Section 330.2 of the Commission's regulations requires that WGP report the terms under which it provides service to its shippers. 18 CFR § 330.2 (2001).

[30] *See* Third Revised Sheet No. 350, Third Revised Volume No. 1 to Transco's FERC Gas Tariff.

[31] 18 CFR § 385.206 (2001).

Moreover, we disagree with Con Ed's and New York's objections to Transco's proposed transfer of facilities to WGP at net book value. Transco will not realize any gain from the transfer of its facilities which it could share with its ratepayers. Therefore, Transco's ratepayers will be in the same position after transfer of the facilities as before the transfer. We find that ratepayers will not be harmed, and that the transfer of the facilities at net book value is appropriate.[32] Thus, we will not defer consideration of this proceeding, as requested by New York.

Finally, we find the record before us contains sufficient information and data to make a reasoned decision on the merits. Accordingly, New York's request for a technical conference is denied

2. Changed Position on Facilities

Indicated Shippers argue that Transco has previously argued that its offshore and onshore facilities were transmission facilities because they constitute a unitary, interdependent and integrated pipeline system that have always been regulated. They contend that Transco has not justified its change in functionalization of the facilities from transmission to gathering. The Producer Coalition and Superior/Walter argue similarly.

a. Transco/WGP Response

Transco/WGP contend that the factors these protestors rely on (*i.e.*, prior certificate and rate status, integrated nature of facilities, ownership by an interstate pipeline, reliance on past regulation, and the presence or absence of competition) are of little or no relevance to the jurisdictional status of the facilities.

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[32] See *Northern Natural Gas Company and Enron Gathering Company*, 73 FERC ¶ 61,223 at 61,626 (1995).

b. Commission Response

We find no cause to disallow Transco the right to claim its facilities perform a gathering function, when in the past it may have advocated the facilities function as transmission. As noted above, the Commission has consistently found that a pipeline's functionalization of facilities for rate and accounting purposes does not determine the function of the facilities for purposes of jurisdiction under NGA section l(b). Historically, many pipelines have functionalized facilities one way for rate purposes, then sought to have such facilities functionalized another way for purposes of certificate and jurisdiction. How pipelines historically functionalized their facilities for rate and accounting purposes does not prevent the Commission from applying the primary function test to determine the current jurisdictional status of the facilities.[33] Here, we are finding that portions of the Central Louisiana facilities do, in fact, perform a gathering function and are therefore exempt from our jurisdiction under NGA section l(b). However, as we stated above, those facilities will remain subject to the OCSLA's requirements for open and non-discriminatory access for all shippers.

C. Jurisdictional Status of Facilities

WGP asks us to declare that the Central Louisiana System would be non- jurisdictional gathering facilities if operated as described in its petition.[34]

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[33] See *Southern Natural Gas Company, et. al.*, 79 FERC ¶ 61,076 at 61,379-80 (1997); CNG Transmission Corp., 67 FERC ¶ 61,257 at 62,177 (1994).

[34] Transco's proposed spindown is being undertaken at the same time as Transco seeks in Docket No. RP92-137-050 to implement a two-part, production area, straight fixed variable rate proposal, and firm-to-gathering rate design. The Commission addressed these issues in its May 31, 2001 order in that proceeding. See *Transcontinental Gas Pipe Line Corp.*, 95 FERC ¶ 61,322 (2001).

Under NGA section 1 (b), the Commission has jurisdiction to regulate the transportation and sale for resale of natural gas in interstate commerce and any natural gas company engaged in that transportation or sale. Section l(b) states, however, that the Commission's jurisdiction does not extend to facilities used for the production or gathering of natural gas. To determine whether particular facilities perform primarily a gathering or transmission function, the Commission considers the criteria articulated in Farmland Industries. Inc., (Farmland)[35] as modified by Amerada Hess Corporation (Amerada Hessl[36] and Sea Robin.[37]

In Farmland, the Commission enumerated several physical and geographic factors to be considered in determining the primary function of a facility, including: (1) the facility's length and diameter, (2) the extension of the facility beyond the central point in the producing field, (3) the facility's geographic configuration, (4) the location of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) operating pressures of the facility.[38] The Commission does not consider any single factor to be determinative and recognizes that all factors do not necessarily apply in all situations.

Over the past decade, the Commission found it necessary to modify the primary function test to recognize the unique physical characteristics of offshore pipeline facilities built on the OCS. In Amerada Hess, the Commission acknowledged

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[35] 23 FERC ¶ 61,063 (1983).

[36] 52 FERC ¶ 61,268 (1990).

[37] *Supra* note 2.

[38] In addition to the Farmland factors, the Commission considers these non-physical criteria in its jurisdictional analysis: (1) the purpose, location, and operation of the facility, (2) the general business activity of the owner of the facility, and (3) whether the jurisdictional determination is consistent with the objectives of the NGA and Natural Gas Policy Act.

that technological advances make it possible to drill for gas at increasing offshore depths. Thus, following Amerada Hess, the Commission has applied a "sliding scale which will allow the use of gathering pipelines of increasing lengths and diameters in correlation to the distance from shore and the water depth of the offshore production area."[39] This "modified primary function" test recognizes that a relatively long pipeline on the OCS may be consistent with a primary function of gathering or production where onshore it would not.

In order to further clarify the jurisdictional status of offshore facilities, the Commission issued an OCS Policy Statement[40] which added a new factor to the primary function test concerning facilities that are designed to collect gas produced in water depths of 200 meters or more. The Policy Statement creates a presumption that these deep water facilities are gathering facilities up to the point or points of interconnection with the interstate pipeline grid. Aside from this presumption concerning deep water facilities, the Policy Statement left the application of the primary function test unchanged.

More recently, as a result of the court's opinion in Sea Robin v. FERC,[41] the Commission has reconsidered the primary function test in view of the unique challenges presented in the attempt to apply Farmland factors to offshore facilities. The court vacated and remanded Commission orders that found under the primary function test, that Sea Robin's OCS pipeline facilities were jurisdictional transmission facilities.

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[39] *Amerada Hess*, 52 FERC at 61,988.

[40] Gas Pipeline Facilities and Services on the Outer Continental Shelf—Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act, 74 FERC ¶ 61,222 (1996), *order dismissing reh'g*, 75 FERC ¶ 61,291(1996).

[41] 127 F3d 385.

In *Sea Robin v. FERC*, the court found, among other things, that the Commission had given too much weight to the length and diameter of the overall system. The court acknowledged that non-physical considerations (such as business purpose, ownership and prior certification of the facilities) are relevant in the analysis but said that they are secondary to physical considerations which must be used in determining where gathering ends and transportation begins.[42] On remand, the court advised the Commission to review its primary function test. The court also advised that the Commission could consider suggestions made by Sea Robin that portions of its system were predominantly involved in gathering while other portions were transmission.

In the order on remand in Sea Robin II, the Commission took the court's suggested approach and reconsidered the application of the primary function test to the OCS facilities. Among other things, the Commission concluded that the "behind-the-plant" factor was not necessarily determinative when the primary function test is applied to offshore facilities. Rather, the Commission decided to assess the physical configuration of a pipeline system to determine if there is a central location where gas is aggregated for further transportation to shore. The Commission concluded that it would view such a location as being the offshore equivalent of the onshore "central-point-in-the-field" factor of the primary function test.[43]

In sum, the reformulated primary function test (1) adopts an additional analytical element applicable to systems that contain a centralized aggregation point, (2) adjusts the weight afforded to the "behind-the-plant" criterion so that the loca-

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[42] 127 F3d at 370-71.

[43] 87 FERC at 62,431.

tion of the processing plants is not necessarily determinative and can be outweighed by other factors, and (3) focuses primarily on physical factors.

1. Protests

Indicated Shippers protest WGP's request for a declaratory order staring that in the OCS Policy Statement, the Commission rejected calls by Transco and other companies that all OCS facilities be found to be gathering. Indicated Shippers argue that the Policy Statement provides that new facilities located in water depths of 200 meters or more will be presumed to be gathering, but that the Commission would not withdraw its jurisdiction, absent changed circumstances, for existing facilities in shallower waters. Indicated Shippers submit that the facilities at issue are located in waters shallower than 200 meters and that Transco has not demonstrated that the primary function of the facilities has changed. They contend that the overwhelming majority of the facilities subject to the spindown are not characteristic of gathering facilities. Likewise, Superior/Walter argue that Transco has not shown that the facilities are, in fact, gathering rather than transmission.

Indicated Shippers and the Producer Coalition argue that contrary to WGP's claim, the primary function of the facilities should be based on considerations relevant to offshore facilities, not onshore facilities. They state that the location of a portion of the facilities onshore does not alter the fact that most of the gas transported on the system is produced from offshore wells. Indicated Shippers state that the onshore location of the processing plants utilized to process offshore gas does not support a finding that all facilities upstream of the plant constitute gathering.

Indicated Shippers and the Producer Coalition also dispute Transco's reliance on Sea Robin II as the primary support for their request to refunctionalize the Central Louisiana

facilities. In particular, Indicated Shippers object to the new "central aggregation point" test added to the OCS criteria and point out that certain parties have sought court review of the Sea Robin II orders setting forth the new test. Regardless of that challenge, Indicated Shippers argue that such test cannot be applied to the central Louisiana facilities because it is very common for the collection or aggregation of gas to be accomplished throughout the entire transmission system. Indicated Shippers argue that the central Louisiana facilities do not have a central aggregation point. In addition, Indicated Shippers state that the main spine of the system consists of large diameter, looped lines that perform a transmission, not gathering function. They also note that numerous wells attached to the system are located some distance from any of the Transco facilities and are attached by smaller gathering lines. They submit that the gathering function is applicable to these facilities, not the Transco facilities at issue.

Indicated Shippers also submit that a central factor in determining the primary function of the facilities at issue is the overall business purpose of the system. They submit that the OCS transmission facilities are part of Transco's integrated pipeline system. Superior/Walter share these concerns.

Producer Coalition primarily objects to the services using the facilities no longer being subject to rate caps if the Commission determines the facilities to be gathering. Producer Coalition suggests that the Commission take no action on the spindown until after the United States Court of Appeals for the D.C. Circuit decides the Sea Robin case. Like Indicated Shippers, Producer Coalition submits that, rather than the reformulated modified primary function test announced in Sea Robin II, the Commission should adopt the "feeder line test" described in the legislative history to OCSLA section 5(f)(2). Under the feeder line test, gathering extends from the wellhead to the point where the gas is first collected and treated to remove free water in preparation for

injection into a pipeline for transportation to shore. Producer Coalition believes that since the facilities listed in the application and petition appear to be downstream of the platform separators and treating facilities, they are not gathering facilities.

Producer Coalition also believes that, even if the Commission's Sea Robin II order is sustained, the Transco facilities are not used for a gathering function. It states that the jurisdictional status of the facilities must be examined in light of the reformulated primary function test. It further argues that because a portion of the facilities are onshore and located behind a processing plant does not qualify the facilities for gathering. Producer Coalition stresses that the Commission has clearly stated that this is the case for almost all offshore facilities and is not determinative of their primary function. In addition, it states that the Commission has made clear that the primary function of offshore facilities has not been reduced to simply identifying the first fork or interconnection in a line leading from shore.[44] It stresses the integrated nature of Transco's system and indicates that the Commission takes the aggregation point on a system into account along with other factors of the primary function test.

Indicated Shippers and the Producer Coalition argue that the size and scope of the Central Louisiana facilities are highly indicative of a transmission function. Indicated Shippers and the Producer Coalition contend that Transco's proposal is flawed, because it contains more than 380 miles of pipeline, including roughly 280 miles of 12-inch or larger pipeline, that perform strictly a transmission, not gathering function.

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[44] See *Dauphin Island Gathering System*, 93 FERC ¶ 61,198 at 61,654 (2000).

a. Transco/WGP Response

TranscoAVGP contend that the Indicated Shippers' functional analysis of the facilities unduly relies on non-physical factors, such as prior certificate and rate classification, system integration, and effects on competition, ownership and business ' purpose, which are of little or no relevance to the jurisdictional status of facilities under NGA section 1 (b). TranscoAVGP also point out that, even if the absence of continued NGA regulation of these facilities, Indicated Shippers still will be protected by the open access and nondiscrimination provisions of the OCSLA.

TranscoAVGP disagree with Indicated Shippers, the Producer Coalition, and SuperiorAValter that the "integrated" nature of the Central Louisiana facilities dictates a transmission function. TranscoAVGP argue that natural gas gathering systems are necessarily integrated with transmission systems, just as gathering systems are integrated with gas production facilities, so that there can be a coordinated movement of gas from production fields to end-use markets. They contend that such integration does not characterized these systems solely as transmission, gathering or production for jurisdictional purposes.

Contrary to Indicated Shippers' contention that the Sea Robin II decision is too broad an interpretation of the NGA section l(b) exemption, WGP states that it showed in that case that the Commission's reformulated primary function test results in too limited a view of the exemption. Nevertheless, TranscoAVGP state that they relied on Sea Robin II to guide the scope of the instant spindown, while reserving their right to challenge any findings in appropriate proceedings. TranscoAVGP submit that Sea Robin II provides compelling support for non-jurisdictional status for the subject spindown, in mat the legs of the Central Louisiana facilities are comparable to the upstream legs of the Sea Robin system which were ruled nonjurisdictional.

TranscoAVGP oppose the Producer Coalitions' request to delay the processing of the spindown until after the D.C. Circuit acts on the Sea Robin appeal. TranscoAVGP complain that, because of previous delays in processing its spindown proceedings, they have already been placed at an unfair disadvantage, vis-a-vis other competitors for OCS gathering services. Transco/WGP also reject Producer Coalition's request for the Commission to adopt a limited interpretation of gathering that they claim would result in the Commission's exercise of NGA jurisdiction over virtually all OCS pipelines (all lines downstream of initial platform separators). Transco/WGP contend that the "feeder line" test was specifically rejected by the Commission as legally deficient in Sea Robin II.[45]

Transco/WGP also object to the Producer Coalition's request to require the disclosure of post-spindown rates and terms and conditions to be offered to shippers. They submit that the Commission has no authority to regulate the post-spindown rates and terms and conditions offered by gathering companies, even those affiliated with a jurisdictional gathering company. Also, they indicate that the Commission has recognized that the OCSLA does not authorize NGA-type rate regulation of OCS pipeline companies.[46]

b. Commission Response

We conclude, for the reasons discussed below, that an assessment of the primary function factors, as modified with respect to offshore facilities, demonstrates that only a portion of the Central Louisiana facilities at issue here are performing primarily a gathering function and will continue to be used

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[45] 92 FERC at 61,294.

[46] Citing Order No. 639-A, FERC Stats. & Regs., Regs. Preambles ¶ 31,103, at 31,686 (2000).

in this capacity following their abandonment by sale to WGP. The remainder of the facilities perform a transmission function.

The facilities consist of both onshore and offshore portions of the total system, which are located behind the onshore, nonjurisdictional Cow Island Processing Plant.[47] The onshore gathering facilities radiate outward from the plant in a web-like configuration to collect gas production The facilities extend into the shallow waters offshore Louisiana via looped trunklines. Numerous gathering laterals collect gas from various offshore production locations and deliver it to the looped trunklines for transportation onshore to the plant.

Specifically, the onshore portion of the facilities consist of slightly more than 180 miles of web-like lateral lines that collect gas from numerous wells in numerous producing fields. The facilities are relatively small, with lines ranging from 2 to 18-inches in diameter. The longest segment is a 26 mile, 18-inch line that interconnects with numerous other laterals on its way to the Cow Island plant. The lines are sized to gather gas from the various producing fields and collect gas from wells located throughout the facilities for movement to the plant. These pipe sizes are consistent with a gathering function.

The offshore facilities, which form a spine and lateral-type configuration, center around looped 16 and 20-inch tninklines (the spine) that travel from Vermilion Block 67, Offshore Louisiana, approximately 42 miles downstream to the processing plant. Once these lines reach shore, they are joined by another loop line, this one 24 inches in diameter, that transports the gas collected upstream to the plant. The primary function of these looped lines is to transport to the Cow Island plant gas gathered from offshore production areas

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[47] WGP the Cow Island plant, which is owned by El Paso Field Services Co.

and delivered into the trunks either directly or indirectly. These spines display the physical characteristics typical of interstate pipeline facilities and function no differently than any other jurisdictional pipeline. It is the various lateral lines connected along the length of these looped lines that perform a gathering function.

We find that the looped transmission lines begin at the Vermilion Block 67 Platforms and traverse the downstream shallow offshore waters to landfall and then on to the Cow Island plant. These looped lines form the spine of the offshore portion of the Central Louisiana facilities. The remaining 6 to 24- inch offshore lateral lines connect at various locations into the spine and serve to collect gas from the surrounding production areas. However, it is at the Vermilion Block 67 platforms that the primary function of the facilities changes. Upstream from this junction, all the facilities perform a gathering function. Downstream from this junction, the spine performs a transmission function, while, as mentioned, the remaining laterals perform a gathering function. This junction serves as the central point of aggregation for the facilities, where all the gas gathered upstream is delivered to a single point for transportation onshore. We find that this junction functions as an aggregation point that may be interpreted as indicating a demarcation of gathering and transmission functions.

The various lateral lines connected to the looped spine are short and small in diameter compared to the facilities found to be gathering in Sea Robin II, These line sizes are common for offshore gathering facilities. These lines are sized appropriately to gather the large volume of gas that is collected from the various wells located throughout the offshore production areas in which the facilities are located. In fact, wells are located all along the length of the lines, up to the Vermilion Block 67 juncture. While not all of the wells may be directly connected to these lines, that does not disqualify

the lines from a finding of gathering. It merely reflects the nature of offshore production, where gas from numerous wells is aggregated at production platforms for movement onshore. In addition, the fact that certain of the lines are located downstream from the central aggregation point does not detract from their primary function of gathering. Like the upstream legs, these lines also serve to gather gas from production located in their vicinity.

There is no compression located along the any of the Central Louisiana facilities, which means that the system operating pressures of between 750 and 1,000 psig are a function of the wellhead pressures and/or producer-owned compression. The wellhead pressures and/or producer compression act to push the gas through the facilities, which is typical of a gathering function,[48] unlike pipeline compression, which is typical of a transmission function. The operating pressures are consistent with those of other onshore and offshore facilities found to be gathering.[49]

In addition, the processing facilities are located on the transmission facilities onshore. We have previously discussed the impracticality of locating processing plants offshore[50] and concluded that, in the offshore context, the absence of processing plants is of little value in assessing the primary function of facilities.

On balance, we find that the 16, 20 and 24-inch looped spine lines from the Cow Island plant upstream to the Vermilion Block 67 platforms perform a transmission function and, thus, remain subject to our NGA oversight. The remainder of the facilities, both onshore and offshore, per-

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[48] *See* Tarpon Transmission Co., 78 FERC ¶ 61,025 (1992).

[49] *See Florida Gas Transmission Co.*, 91 FERC ¶ 62,164 (2000) and *Trunkline Gas Co.*, 95 FERC ¶ 61,337 (2001).

[50] *See, e.g., EP Operating v. FERC*, 876 F.2d 45, 49 (5th Cir. 1989).

form a gathering function and, accordingly, are exempt from our NGA regulatory oversight.

Protestors want the Commission to delay action here pending the outcome of the court proceedings in Sea Robin II and suggest that we adopt the "feeder line test" rather than the primary function test to determine gathering. First, we will not hold this proceeding in abeyance pending the outcome of the Sea Robin II court case. The Commission currently has guidance from the court on how to proceed in distinguishing gathering from transmission on the OCS and we use that guidance in our determination here. Second, we have already addressed the "feeder line" issue in the Sea Robin 11 order. There, the Commission rejected arguments that, as a result of enactment of the OCSLA, we must adopt a "feeder line" definition of gathering.[51] For the same reasons, we reach the same conclusions here.

Indicated Shippers argue that our OCS Policy Statement established the expectation that, absent changed circumstances, existing offshore facilities are to retain their jurisdictional or nonjurisdictional status under the NGA. We disagree. The OCS Policy Statement is not intended to stand for permanently fixing the present jurisdictional status of offshore facilities. The OCS Policy Statement anticipates that facilities may be reclassified in response to changing circumstances. We find Transco's restructuring and the adaptation of our primary function test in the Sea Robin II order on remand qualify as legitimate reasons to revisit the jurisdictional status of Transco's existing offshore facilities.

Indicated Shippers contend that a central factor in determining the primary function of the facilities at issue is the overall business purpose of the system. While we find it useful to look at the nature of the company that owns and operates facilities proposed to be spundown, that is but one of

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[51] *See Sea Robin II, 92 FERC ¶ 61,072* at 61,294 (2000).

the factors to be considered. Here, Transco is an interstate gas transporter that has gone through restructuring to segregate its previously bundled services. We find that Transco's primary business is that of transportation. However, we also find that the nature of Transco's business, in and of itself, does not disqualify certain of the facilities at issue from a determination of gathering. The Commission, in its primary function analysis, does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply in all situations.

Transco's application reflects that Columbia Gulf Transmission Company, CNG Transmission Corporation (now Dominion Transmission, Inc.), Florida Gas Transmission Company, and Sea Robin are joint owners of certain segments of the Central Louisiana facilities. To the extent that these parties co-own with Transco facilities we have found to be nonjurisdictional, and currently functionalize their interests in the facilities as transmission, these parties will need to refunctionalize such facilities as gathering for rate and accounting purposes in their next NGA section 4 rate proceeding.[52]

C. Environmental

Finally, we conclude that approval of the proposed abandonment will not constitute a major federal action significantly affecting the quality of the environment.

At a hearing held on August 31, 2001, the Commission on its own morion received and made a part of the record in these proceedings all evidence submitted, including the applications and petitions and exhibits supporting the sought authorizations, and after consideration of the record.

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[52] See *CNG Transmission Corp.*, 67 FERC ¶ (61,330, at 62,178 (1994); Southern Natural Gas Co., 79 FERC ¶ 61,076 at 61,380 (1997); and Natural Gas Pipeline Co. of Amer., 95 FERC ¶ 61,317 (2001).

The Commission orders:

(A) In Docket No. CP01-368-000, Transco is granted permission and approval under NGA section 7(b) to abandon by sale to WGP, its interests in the Central Louisiana facilities, as described more fully in this order.

(B) In Docket No. CP01-369-000, upon acquisition by WGP, the Central Louisiana facilities, except for the 16, 20, and 24-inch looped lines between the Vermilion Block 67 platforms and the Cow Island plant, will be deemed gathering facilities exempt from the Commission's jurisdiction under NGA section 1 (b).

(C) Within 15 days after WGP acquires the Central Louisiana facilities deemed gathering, WGP shall file an initial OCSLA Report with respect to such facilities, in accordance with the reporting requirements of Commission Order No. 639, and thereafter to file quarterly OCSLA Report updates, as needed, in accordance with the provisions of Order No. 639.

(D) In Docket No. CP01-369-000, the looped lines between Vermilion Block 67 and the Cow Island plant are and will be transmission facilities subject to the Commission's NGA jurisdiction.

(E) Transco shall notify the Commission within 10 days of the date of abandonment of the facilities described above.

(F) Transco is authorized to abandon its X-rate schedule transportation services as well as the affected receipt points under its Part 284 agreements previously described, provided they are services rendered through or are facilities that are part of those found to be gathering and will be abandoned to WGP.

(G) Consistent with Section 154.303(c)(2) of our regulations, Transco shall adjust its rates to remove the cost of the Central Louisiana facilities found to be gathering in its current rate proceeding in Docket No. RP01-245-000.

(H) The protests in this proceeding are denied.

(I) The late motions to intervene are granted.

(J) The request for a technical conference is denied.

By the Commission.

(SEAL)

Linwood A. Watson, Jr.
Acting Secretary

APPENDIX

Interventions and Protests in Docket No. CPQ1-368-000

Amerada Hess Corporation
Amoco Production Company and BP Energy Company
Anadarko Petroleum Corporation
Atlanta Gas Light Company and Virginia Natural Gas Company
Burlington Resources Oil & Gas Company L.P.
Chevron U.S.A. Inc.
City of Richmond. Virginia*
Consolidated Edison Company of New York**
Delmarva Power & Light Company
Dynegy Marketing and Trade
Enron North America Corp.
Exxon Mobil Corporation
Indicated Shippers **
KeySpan Delivery Companies
National Fuel Gas Distribution Corporation
Occidental Energy Marketing, Inc.
PECO Energy Company
Philadelphia Gas Works
Phillips Petroleum Company and Phillips Gas Marketing Company
Piedmont Natural Gas Company, Inc.
Producer Coalition** ***
Public Service Commission of the State of New York
Public Service Company of North Carolina***
Shell Offshore Inc.
Southern Companies, Inc.
Southern Natural Gas Company

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* Comments

** Protests the application.

*** Intervention out-of-time.

Superior Natural Gas Corporation and Walter Oil & Gas Corporation ** ***
Texaco Natural Gas Inc.
Transco Municipal Group and the Municipal Gas Authority of Georgia ***
United Cities Gas Company, a division of Atmos Energy Corporation
Washington Gas Light Company
Williams Gas Processing-Gulf Coast Company, L.P.

APPENDIX

Interventions and Protests in Docket No. CPO1-369-000

Amerada Hess Corporation
Amoco Production Company and BP Energy Company
Anadarko Petroleum Corporation
Atlanta Gas Light Company and Virginia Natural Gas Company
Burlington Resources Oil & Gas Company L.P.
City of Richmond, Virginia
Chevron U.S.A. Inc.
Conoco Inc.
Dynegy Marketing and Trade
Enron North America Corp.
Exxon Mobil Corporation
Indicated Shippers [FNa1]
KeySpan Delivery Companies
Occidental Energy Marketing, Inc.
Phillips Petroleum Company and Phillips Gas Marketing Company [FNaa1]
Piedmont Natural Gas Company, Inc
Producer Coalition [FNa1]
Public Service Commission of the State of New York
Shell Offshore Inc.
Southern Companies, Inc.

Southern Natural Gas Company
Superior Natural Gas Corporation and Walter Oil & Gas Corporation [FNa1] [FNaa1]
Texaco Natural Gas Inc.
Transco Municipal Group and the Municipal Gas Authority of Georgia [FNaaa1]
Transcontinental Gas Pipe Line Corporation
United Cities Gas Company, a division of Atmos Energy Corporation

FNa1. Protests the application.

FNaa1. Intervention out-of-time.

FNaaa1. Comments

APPENDIX I

FEDERAL ENERGY REGULATORY COMMISSION
Commission Opinions, Orders and Notices

[Filed December 19, 2001]

Docket No. CP01-368-001
Docket No. RP01-245-004
Docket No. CP01-369-001

Transcontinental Gas Pipe Line Corporation
Williams Gas Processing-Gulf Coast Company, L.P.

ORDER ON REHEARING

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

September 28, 2001, Indicated Shippers[1] filed a Request for Rehearing of the Commission's Order Authorizing Abandonment and Determining Jurisdictional Status of Facilities issued in these dockets on August 31, 2001 (August 31 Order).[2] On October 1, 2001, Transcontinental Gas Pipe Line Corporation (Transco) and Williams Gas Processing-Gulf Coast Company, L.P. (WGP) filed a joint Request for Rehearing and Limited Stay of the August 31 Order. Also on

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[1] Indicated Shippers is an ad hoc group of companies having an interest in gas transported on the Transco system. In this case, the members of Indicated Shippers are: Amerada Hess Corporation, Amoco Production Company, BP Energy Company, Burlington Resources Oil & Gas Company, L.P., Chevron U.S.A., Inc., Exxon Mobil Corporation, Occidental Energy Marketing, Inc., Shell Offshore Inc., and Texaco Natural Gas, Inc.

[2] *Transcontinental Gas Pipe Line Corporation, et al.*, 96 FERC ¶ 61, 246 (2001) (August 31Order).

October 1, 2001, the Producer Coalition[3] filed a Request for Rehearing of the August 31 Order. On October 16, 2001, Key Span Delivery Companies, Atlanta Gas Light Company and Virginia Natural Gas Company, Consolidated Edison Company of New York, Inc., Delmarva Power & Light Company, Philadelphia Gas Works, Public Service Electric and Gas Company and Washington Gas Light Company (KeySpan) submitted a response[4] in partial opposition to the requests of Transco for limited stay and rehearing. Keyspan incorporated by reference its September 10, 2001 response in Docket Nos. CP01-32-000, *et al.*, and CP01- 103-000, *et al.* The August 31 Order approved a request by Transco to abandon certain facilities located offshore and onshore Louisiana (Central Louisiana facilities) by transfer to its gathering affiliate, WGP. The August 31 Order also granted, in part, WGP's request that the Commission declare that the facilities it proposes to acquire from Transco will be, upon abandonment by transfer to WGP, gathering facilities and services, exempt from the Commission's jurisdiction under the NGA. The Commission determined that facilities upstream from Vermilion Block 67 perform a gathering function and facilities downstream from this junction perform

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[3] The Producer Coalition is an ad hoc group of natural gas producers, made up of Devon Energy Corporation, Dominion Exploration & Production, Inc., Forest Oil Corporation, The Houston Exploration Company, Newfield Exploration Company, and Ocean Energy, Inc. These companies have significant investment in oil and gas exploration and production projects in the Gulf of Mexico and are shippers and marketers of gas on numerous OCS pipelines.

[4] Under the Commission's Rules of Practice and Procedure, there is nothing which forecloses KeySpan from responding to a request for stay. Under Rule 713(d), parties are normally precluded from responding to a request for rehearing. 18 CFR § 713(d) (2001). However, the Commission has determined that it will accept answers to rehearing in order to ensure that all arguments are considered.

a transmission function.[5] The August 31 Order also directed Transco to adjust its rates to remove the cost of the facilities to be abandoned from its current rate proceeding in Docket No. RP01-245-000. This order denies or grants the requests for rehearing, as discussed below.[6] As noted in the August 31 Order, abandonment serves the public interest by permitting Transco to eliminate unnecessary expenses associated with facilities no longer needed to provide certificated services and enables WGP to make efficient use of these same facilities. Granting rehearing on the rate issue serves the public interest by assuring that the jurisdictional rates will continue to be just and reasonable while also preserving the integrity of the Commission's ratemaking policies.

I. Background

The August 31 Order permitted Transco to abandon, by transfer to its affiliate WGP, approximately 380 miles of 2-inch to 24-inch pipeline located in the East Cameron and Vermilion Areas, offshore Louisiana, and in Acadia, Jefferson Davis, and Vermilion Parishes, Louisiana (Central Louisiana facilities). In response to WGP's request, the August 31 Order sought to determine whether the facilities at issue were used primarily to transport gas, and thereby were subject to our jurisdiction under the NGA, or were used primarily to produce or gather gas, and thereby were exempt from our NGA jurisdiction.[7]

To determine the primary function of particular facilities, the Commission applies the criteria articulated in Farmland Industries, Inc., (Farmland).[8] In Farmland, the Commission

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[5] 96 FERC at 61,976.

[6] As the Commission is granting the request for rehearing on the rate issue which is the subject of the motion for stay, the motion is moot.

[7] Section 1(b) of the NGA states that "[t]he provisions of this Act . . . shall not apply to . . . the production or gathering of natural gas."

[8] 23 FERC ¶ 61,063 (1983).

enumerated several physical and geographic factors to be considered in determining the primary function of a facility, including: (1) the facility's length and diameter, (2) the extension of the facility beyond the central point in the producing field, (3) the facility's geographic configuration, (4) the placement of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) operating pressures. In addition to these physical and geographic criteria, the Commission also considers the purpose, location, and operation of the facility, the general business activity of the owner of the facility, and whether the jurisdictional determination is consistent with the objectives of the NGA and Natural Gas Policy Act. We do not consider any single factor to be determinative and recognize that all factors do not necessarily apply in all situations.

The Commission has modified this primary function test for facilities located offshore. In 1990, in Amerada Hess Corporation (Amerada Hess),[9] the Commission observed that as a result of "recent advances in engineering and available technology, offshore drilling operations continue to move further offshore and further from existing interstate pipeline interconnections." [10] Given the increasingly remote location of such offshore facilities, the Commission found that offshore pipelines used to produce or gather gas may be larger and longer than onshore pipelines that perform the same function. Accordingly, the primary function test was modified for application to offshore facilities, by applying "a sliding scale which will allow the use of gathering pipelines of increasing lengths and diameters." [11]

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[9] 52 FERC ¶ 61,268 (1990).

[10] *Id.*, at 61,988.

[11] *Id.*

In Sea Robin Pipeline Company (Sea Robin),[12] the Commission reformulated the primary function test with respect to offshore facilities by (1) adopting an additional analytical element applicable to systems that contain a centralized aggregation point; (2) adjusting the weight to be afforded the "behind-the-plant" criterion so that the location of processing plants is not necessarily determinative and can be outweighed by other factors, and; (3) focusing primarily on physical factors.

The August 31 Order, in considering the primary function of the subject facilities, applied the Farmland test as modified in Amerada Hess and as reformulated in Sea Robin. The Commission found that: (1) the Vermilion Block 67 junction serves as the central point of aggregation; (2) the length and diameter of the numerous pipelines are consistent with offshore gathering facilities; (3) the wellhead pressures are typical of a gathering function; (4) the absence of processing plants is of little value in assessing the primary function of facilities. Accordingly, the Commission concluded that the "primary function" of the facilities located upstream from Vermilion Block 67 perform a gathering function and will continue to be used in this capacity following their abandonment by sale to WGP, but that the remainder of the facilities perform a transmission function.

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[12] 71 FERC ¶ 61,351 (1995), order on reh'g, 75 FERC ¶ 61,332 (1996), remanded sub nom. Sea Robin v. FERC, 127 F. 3d 365 (Fifth Cir. 1997), reh'g denied (February 2, 1998), order on remand, 87 FERC ¶ 61,384 (1999), order denying reh'g, 92 FERC ¶ 61,072 (2000), order denying stay, 92 FERC ¶ 61,217 (2000).

II. Requests for rehearing

A. Whether the abandonment of the North High Island and West Cameron facilities is in the public interest.

1. Interests of shippers and the public

Indicated Shippers state that the Commission's finding that it has no discretion to withhold authorization for the transfer of facilities, when it believes that the primary function of the facilities is gathering, is not correct.[13] Indicated Shippers state that Section 7 of the NGA makes clear that the Commission's first duty is to protect the interests of shippers and the public, rather than to accommodate Transco's and WGP's corporate objectives.

Indicated Shippers point out that the abandonment would remove certain receipt points from those available to IT-feeder shippers that ship under Transco's tariff to FT shippers. Indicated Shippers state that the public interest is not served by the unilateral termination or degradation of existing firm services or by the abandonment of IT-feeder facilities to an un-regulated affiliate. Indicated Shippers state that producers and other shippers have relied for decades on the Commission's regulation of the entirety of Transco's offshore pipeline system. Indicated Shippers state that the public interest is not served by undermining these expectations by reversing decades of prior regulatory practice. Further, Indicated Shippers state that dividing this operationally integrated system into separate regulated and unregulated parts is not in the public interest because it could undermine the Commission's open access policies.

Indicated Shippers state that Transco's abandonment application is grounded on the theory that, because Transco no longer provides bundled sales service, Transco's gathering services must be freed from the Commission's regulations in

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[13] 96 FERC at 61,970.

order to be able to compete with exempt gatherers. Indicated Shippers state that Transco has presented no evidence to support a finding that it has been unable to compete with non-NGA-regulated gathering companies. Indicated Shippers state that Transco is not concerned over whether it will be able to effectively compete in the marketplace with exempt gathers. Rather, Indicated Shippers state that Transco's real concern is over whether it will be able to take advantage of its existing control of the market in order to exact monopoly rents from shippers.

Commission response

We reaffirm our conclusion that the abandonment is required and in the public interest. Where facilities are found to be used primarily in production or gathering, section 1(b) of the NGA directs that they be excluded from our NGA regulatory jurisdiction. As stated in the August 31 Order, the abandonment is consistent with unbundling policies of Order No. 636, and should, in the long run, promote competition.[14] Under the Outer Continental Shelf lands Act (OCSLA),[15] WGP will be prevented from discriminating against any shipper that seeks access to these facilities. Further, as noted in the August 31 Order, WGP will be subject to our OCSLA regulations which require that WGP report the terms under which it provides service to its shippers.[16] The Commission will continue to employ its NGA authority to ensure that Transco's jurisdictional rates remain just and reasonable. And, Transco's existing tariff standards prevent it from acting in a discriminatory manner.[17] WGP has agreed to continue to serve Transco's existing customers following the facilities'

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[14] 96 FERC at 61,970.

[15] 43 U.S.C. 1301-1356.

[16] 96 FERC at 61, 972.

[17] 96 FERC at 61,971.

transfer. This should avoid any abrupt disruption to Transco's customers' expectations.

Independent entities engaged in different aspects of gas development, production, gathering, transporting, and delivery to end users are able to negotiate and rely on contractual capacity and scheduling commitments to guarantee the efficient movement of gas. Because we expect WGP, like all other offshore gatherers, will prove able to enter into service agreements with Transco, and any other transmission pipelines it may rely on, to take timely deliveries of its anticipated gas volumes, we see no need for Transco to retain ownership of its upstream gathering facilities to ensure the orderly flow of gas into its downstream transmission mainlines.

2. Effect on cost of moving gas to shore

Indicated Shippers complain that the August 31 Order transforms a single IT-feeder rate into rate-stacked charges for WGP's gathering and Transco's transmission services. Indicated Shippers state that without the constraint of rate regulation under the NGA, WGP will be able to charge shippers whatever the market will bear. Indicated Shippers state that there are no interconnections with other pipelines at the point at which the Commission finds that gathering ends and transmission begins, so shippers using the gathering facilities have no choice but to utilize Transco's remaining downstream IT-feeder transmission facilities to access Transco's mainline. Indicated Shippers state that it is not enough to say that the procedural safeguards of the OCSLA will adequately protect shippers from the market power of Transco and WGP.

Commission response

Prior to abandonment, shippers are effectively paying Transco a transportation rate that includes gathering. That gathering service will be unbundled and provided by WGP. WGP's acquisition of Transco's facilities will necessarily

subject shippers on these facilities to both a gathering and a transportation charge, where before such shippers were subject to a single Transco transportation rate. The Commission acknowledges that after the transfer of the facilities, shippers may pay a higher combined gathering fee and transportation charge to move gas between specific receipt and delivery points than the rate they now pay for bundled gathering and transportation service between the same points. However, this is neither inequitable nor an unwarranted rate stacking. As discussed in Order No. 636, it is appropriate to segregate and charge separate rates for separate services, rather than continue to compel shippers to pay a bundled charge for several distinct services.

The Commission will continue to employ its NGA authority to ensure that Transco's rates remain just and reasonable. Regarding WGP's facilities, although no State agency has authority, these facilities remain subject to federal oversight under the OCSLA. Though the OCSLA does not provide for rate regulation equivalent to that of the NGA, shippers are assured open and nondiscriminatory access to WGP's facilities. Onshore, and in state waters offshore, shippers on NGA-exempt facilities can appeal to state authorities to monitor WGP's operations. In the event a shipper believes either Transco or WGP violates its statutory obligations under the OCSLA, the Commission encourages that shipper to submit a complaint to the Commission describing the alleged violation.[18]

B. Challenges to the primary function test

1. Should the Commission apply the OCSLA "feeder line" test instead.

Producer Coalition states that because of the close relationship between the OCSLA, the principal federal statute

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[18] 18 CFR § 385.206 (2001).

governing the OCS, and the NGA, the Commission should accord significant weight to legislative intent in formulating the jurisdictional test for OCS pipelines. Producer Coalition states that Congress has addressed the nature of gathering operations on the OCS in the 1978 OCSLA Amendments.[19] Producer Coalition states that, throughout the consideration of OCS pipeline issues, Congress equated "gathering" lines with "feeder" lines and concluded that such lines end where gas is "first separated, dehydrated or otherwise processed" on an OCS platform.[20] Producer Coalition states that the Commission erred in failing to accord the definition of gathering from the OCSLA Amendments of 1978 significant weight in its jurisdictional test. Producer Coalition states that the offshore Central Louisiana facilities are properly classified as jurisdictional transportation systems under the "feeder line" test.

Commission response

The Commission does not consider Congress' discussions of proposals to modify the OCSLA as guidance for jurisdictional distinctions under the NGA. The separate statutes, although complementary, have distinctly different scopes. The OCSLA applies to the full range of gas exploration, development, production, gathering, and transportation activities.[21] This is a broader regulatory sweep than the NGA which explicitly exempts facilities used for production, gathering, local distribution, and certain in-state transportation. It would be inappropriate to rely on definitions and terms of art indigenous to one statute to interpret and enforce the other. Accordingly, the Commission rejects the Producer Coalition's effort to use legislative history associated with the

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[19] 43 U.S.C. 1301-1356.

[20] 43 U.S.C. § 1334(f)(2).

[21] 43 U.S.C. 1331(q).

1978 amendment to the OCSLA as a foundation to argue for a new NGA primary function test.

2. Must Transco demonstrate changed circumstances

The August 31 Order stated that "a pipeline's functionalization of facilities for rate and accounting purposes does not determine the function of the facilities for purposes of jurisdiction under section 1(b) of the NGA. How pipelines historically functionalized their facilities for rate and accounting purposes does not prevent the Commission from applying the primary function test to determine the current jurisdictional status of the facilities." [22] In addition, the Commission also stated that it found "no cause to disallow Transco the right to claim its facilities perform a gathering function, when in the past it may have advocated the facilities function as transmission." [23]

Indicated Shippers state that while historical functionalization alone may not be determinative, the prior treatment of the facilities by both Transco and the Commission should be given presumptive effect in the absence of a showing of changed circumstances. Indicated Shippers state that given Transco's prior arguments to the Commission that the facilities were transmission, Transco should be estopped from now arguing that they are gathering.

Indicated Shippers state that Transco has failed to show a change in circumstance that would demonstrate that the subject facilities are now gathering. Indicated Shippers state that the Commission offers no reasoned explanation why restructuring served to change the function of Transco's facilities, particularly given that the Commission's prior findings that the facilities are properly treated as transmission

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[22] 96 FERC at 61,972, citing *Southern Natural Gas Company, et. al.*, 79 FERC ¶ 61,076 at 61,379 (1997).

[23] *Id.*

was made in conjunction with Transco's restructuring. Indicated Shippers state that Transco itself previously argued that restructuring served to reinforce the fact that all of its pipeline facilities provide a transmission function.

Indicated Shippers state that the Commission's decision here to change the pre-existing functionalization of certified facilities in the shallow waters of the OCS is in direct conflict with the OCS Policy Statement that indicates that the Commission would preserve the existing status of interstate pipeline facilities in the shallow water of the OCS.

Commission response

The OCS Policy Statement was explicit that "existing interstate pipelines and gathering facilities would retain their status barring some change in circumstances."[24] Nevertheless, the OCS Policy Statement must be read in light of the subsequent opinion in *Sea Robin v. FERC*, which determined that nonphysical factors such as ownership and prior certification are considerations secondary to physical factors.[25] In any event, the OCS Policy Statement anticipates that facilities may be reclassified in response to changing circumstances. The August 31 Order accepted Transco's claim that reclassification is merited as a response to Order No. 636. After Order No. 636, many interstate pipeline companies found portions of their system's facilities were no longer required in order to provide certain certificated services. Where we found such facilities were employed to gather gas supplies needed to ensure a pipeline's capability to

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[24] Gas Pipeline Facilities and Services on the Outer Continental Shelf - Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act, 74 FERC ¶ 61,222 at 61,757 (1996), order dismissing reh'g, 75 FERC ¶ 61,291 (1996) (OCS Policy Statement).

[25] 123 F.3d at 371.

fulfill merchant sales obligations, a function that is no longer offered, we permitted pipelines to abandon such facilities.[26]

Second, Order No. 636 aside, a pipeline company can submit an abandonment application at any time, and the Commission will consider the reasons presented for requesting a review of the company's facilities' classification. We have acknowledged that the facilities were constructed, owned, and operated by Transco, historically an NGA-regulated interstate transportation provider. Nevertheless, we found that changed circumstances, principally Transco's reorganization in response to Order No. 636, tempered this indicator that the facilities were dedicated to interstate transportation.

3. Does the Central point of aggregation factor create a single factor test

As stated earlier, in Sea Robin, the Commission reformulated the modified primary function test adding a new "centralized aggregation point" factor for determining the jurisdiction of facilities on the OCS.

In Sea Robin the Commission found that gathering ends and transmission begins at the point where two or more segments of an OCS pipeline join for the last time and a single line moves natural gas towards shore.[27] The Commission refers to this as the "centralized collection point," or "central aggregation point," which is the point at which the gas collection/aggregation process on an OCS interstate pipeline ends.

Indicated Shippers complain that the Commission's analysis in Sea Robin is inherently flawed. Indicated Shippers state that this new test permits the Commission to find a point

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[26] 96 FERC at 61,971.

[27] Sea Robin, 87 FERC at 62,430-431.

on a pipeline where the largest diameter pipeline on the system begins or where all upstream lines converge, and to designate that point as the demarcation point where gathering ends and transportation begins. Indicated Shippers state that this test would essentially eliminate any evaluation of the physical, geographical, and operational factors traditionally considered by the Commission in distinguishing gathering from transportation. Indicated Shippers state that in place of the primary function test, Sea Robin essentially establishes the very type of bright line test for which the Commission was admonished by the Fifth Circuit.[28] Indicated Shippers state that under this test the Commission would look for the central point on a pipeline system without reference to the nature of the upstream facilities and their relationships with producers' wells and other facilities.

Producer Coalition makes a related argument that because three of the factors contained in the modified primary function test produce three mutually exclusive jurisdictional results, the Commission, by necessity, must select one factor to predominate in order to reach a jurisdictional determination. Producer Coalition state that if the Commission gives principal emphasis to the "behind the plant" location of facilities, all OCS facilities will be declared non-jurisdictional, because all processing plants downstream of OCS pipelines are located onshore.[29] Alternatively, Producer Coalition state that if the Commission gives principal emphasis to length and diameter of the pipeline, most major OCS systems will be found jurisdictional. Third, Producer

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[28] Citing, *EP Operating Co. v. FERC*, 876 F.2d 46 (5th Cir. 1989).

[29] Because of this fact, Producer Coalition state that the Commission has effectively disregarded the behind-the-plant factor in determining the jurisdictional status of OCS facilities. *Sea Robin II*, 87 FERC 62,428; *Enron Gulf Coast Gathering*, 95 FERC ¶ 61,318; *Trunkline Gas Company, et al.*, 95 FERC ¶ 61,337 (2001); and *Seahawk Transmission Co.*, 95 FERC ¶ 61,342 (2001).

Coalition state that if the Commission relies on the "central point of aggregation factor," the great bulk of OCS pipelines will be found non-jurisdictional except for the lines that run from the last major intersection offshore to the onshore terminus of a system. Producer Coalition state that while the other factors contained in the modified primary function test, *i.e.*, (i) location of wells along all or part of the facility; (ii) geographic configuration; (iii) line pressure; and even (iv) the nature of the company that owns and operates the facilities-can be interpreted in a manner to support each of the above jurisdictional results, the results themselves cannot be reconciled with each other. Producer Coalition reason that use of the modified primary function test necessarily involves the selection of one dominant factor, which is determinative of the outcome. Producer Coalition state that that factor, however, becomes the "bright line" standard, which runs afoul of the Fifth Circuit's conception of reasoned decision-making.

Commission response

The above line of arguments largely represents a collateral attack on the Commission's reasoning in Sea Robin and is rejected for that reason. In addition, Indicated Shippers and Producer Coalition misread the August 31 Order. For both the Sea Robin and Transco systems, all relevant criteria of the Farmland test, as modified with respect to offshore facilities, were afforded appropriate consideration. In this case, not all factors pointed to the same primary function—a result commonly encountered in applying our multi-factor test—thereby compelling the Commission to weigh each factor to balance the conflict presented. In the August 31 Order, in addition to the location of points of aggregation, the Commission found that the configuration of the facilities, the lack of compression, and the size and scope of the pipelines also demonstrated a gathering function.[30] The Commission

[30] 96 FERC at 61,459.

found that the absence of processing plants was of little value in guiding the determination on the primary function of the facilities.[31] Although the Commission did identify a single, central point of aggregation, the primary function finding did not rest solely on this feature (or on any other single factor) of the system. The claim that under our primary function test, the Commission is compelled to select a single factor and let it dominate to determine jurisdiction, is rejected.

C. Challenges to the application of the primary function test

1. Configuration

Indicated Shippers state that even if the Sea Robin "central point of aggregation" analysis is lawful, the Commission's selection of the Vermilion Block 67 platform as the demarcation points is inappropriate. Indicated Shippers states that Map 6W-B reflects the many smaller pipeline facilities forming "Y" configurations along the lateral lines and going out to the actual wells. Indicated Shippers state that the Commission should not ignore these upstream facilities, which aggregate gas and provide the gathering function on the system. Indicated Shippers state that the facili ties downstream of these smaller lines should be treated as transmission.

Indicated Shippers state that the location of wells, for the most part, appear to be remote from Transco's facilities. Indicated Shippers state that production is brought to Transco in smaller gathering lines. Accordingly Indicated Shippers state that, the gathering function is provided by other parties, whose facilities bring gas to Transco's trunk lines. For example, Indicated Shippers state that the map of the Central Louisiana facilities shows numerous wells, purportedly served by Transco's facilities, that are located off Transco's

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[31] *Id.*

lines.[32] Although Indicated Shippers agree with the Commission's finding that this alone would not disqualify the lines from a finding of gathering this is yet another piece of evidence that supports a finding that the subject facilities are transmission and not gathering.

Commission response

In Sea Robin, the Commission took note of the court's observation that, while the task in a case may be difficult, the Commission must squarely address the fact that the demarcation point between gathering and transmission may be located at a point internal to the overall system.[33] The Commission explained that the most logical demarcation point may be the "coincidence of several smaller lines at a centralized location where the gas carried is delivered into a single, larger-diameter line for further delivery to market."[34] A primary function review of the traits of all potential legs and trunks is required.

The Commission found that the Vermilion Block 67 platforms serves as the central point of aggregation for the facilities, where all the gas gathered upstream is delivered to a single point for transportation onshore. Although the Vermilion Block 67 junction does not exhibit as strong an indication of a marked physical change in facilities as was the case in Sea Robin,[35] the Commission found that it functions as an aggregation point that may be interpreted as indicating a demarcation of gathering and transmission functions. The

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[32] *See Abandonment Application*, Exhibit Z (maps 6W-A and B).

[33] 92 FERC ¶ 61,072 at 61,290.

[34] 92 FERC ¶ 61,072 at 61,290.

[35] In Sea Robin, the central point of aggregation was a manned off-shore platform at which two smaller lines merged into a single larger line, significant compression facilities were located on the platform, and the platform was situated as a point geographically central to the Sea Robin system.

configuration of this point implied a transition from gathering to transmission, a finding that was accepted only after applying the multi-factor methodology to the rest of Transco's facilities.

2. Size

The onshore portion of the facilities consist of slightly more than 180 miles of web-like lateral lines that collect gas from numerous wells in numerous producing fields. The facilities are relatively small, with lines ranging from 2 to 18-inches in diameter. The longest segment is a 26 mile, 18-inch line that interconnects with numerous other laterals on its way to the Cow Island plant. The offshore facilities, which form a spine and lateral-type configuration, center around looped 16 and 20-inch trunklines (the spine).

Indicated Shippers state that although *EP Operating Co. v. FERC*,[36] stands for the proposition that the Commission should not improperly overemphasize the length of the pipeline in its primary function analysis, length is still an important factor to consider. Indicated Shippers state that out of the 200 miles of pipeline at issue, over 100 miles of the pipeline consist of pipe with a diameter equal to or greater than 12 inches, including some 24-inch pipe that extends from the trunk line westward to Vermilion Block 22. Indicated Shippers state that Seahawk Shoreline System,[37] illustrates that 12-24 inch pipeline facilities can qualify as transmission facilities. Indicated Shippers complain that in the August 31 Order, the Commission failed to take into account the overall length of the pipeline in its determination that the facilities are gathering.

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[36] 876 F.2d 46 (5th Cir. 1989).

[37] 93 FERC ¶ 61,097 (2000) order denying reh'g, 95 FERC ¶ 61,342 (2000).

Commission response

The Commission has adopted no bright line test regarding the size of jurisdictional offshore facilities. Although size generally correlates with function, large offshore facilities need not be summarily disqualified from gathering status if the other characteristics of the facilities are indicative of a gathering function.[38] Facilities as large as typical transmission lines may nevertheless be found to be gathering when other primary function factors demonstrate characteristics consistent with gathering.[39] Likewise following review of the Farmland factors, we have also determined that systems smaller than these perform a transmission function.[40]

In this case, the Commission applied the several factors of the primary function test. Not all factors were found to be relevant or uniform, and certain factors exhibited more value or weight than others. The subject lines' large diameters, a usual indicator of a transmission function, was outweighed by other characteristics denoting a gathering function. The Commission affirms the prior determination that on balance the factors indicate that the facilities to be abandoned perform primarily a nonjurisdictional gathering function.

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[38] *See Amerada Hess*, 52 FERC P61, 268 (1990) (discussion of and response to *EP Operating v. FERC*, 876 F.2d 45 (5th Cir. 1989). *See also Viosca Knoll*, (finding a relatively long, large line gathering).

[39] Offshore, a 28-inch diameter line has been found to be gathering. *Exxon Corporation*, 45 FERC P61, 436 (1988). However, that diameter was found in 9.5, 7.9, and 6.1 -mile segments of a 36.7-mile system that was producer owned, carried only sour gas, included no compression, and performed production as well as gathering.

[40] *See, e.g., Louisiana Intrastate Gas Corporation*, 69 FERC ¶ 61,022 (1994) (a system composed of 1.34 miles of 4-inch diameter pipe and 21.94 miles of 16-inch diameter pipe that serves to carry gas from OCS production areas to shore).

3. Pressure

Indicated Shippers argue that the pressure ranges of the facilities, between 750 and 1000 psig, also indicate a transmission function. Indicated Shippers state that these pressure ranges reflect neither the very high nor low operating pressures frequently seen in gathering lines. Indicated Shippers state that the absence of compression does not undermine this view: it simply reflects that compression was unnecessary, and sheds no light on whether the facilities are gathering or transmission.

Commission response

There is no compression located along any of the Central Louisiana facilities, which means that the systems operating pressures are a function of the wellhead pressures. The wellhead pressures act to push the gas through the facilities, which is typical of a gathering function, unlike compression, which is typical of a transmission function. While these pressures would indicate a transportation function onshore, they must be viewed, here, in the offshore context. These pressures are consistent with the nature of offshore production and comparable to operating pressures of other offshore facilities found to be gathering.[41] Accordingly, the Commission affirms the prior determination that the pressure factors indicate that the facilities to be abandoned located upstream from Vermilion Block 67, perform primarily a nonjurisdictional gathering function.

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[41] *See, e.g., Northern Natural Gas Company*, 93 FERC ¶ 61,101 (2000) (offshore facilities operating at pressures between 1,050 and 1,200 psig found gathering) and *Tarpon Transmission Company*, 78 FERC ¶ 61,278 (1997) (offshore facilities operating at pressures between 1,100 and 1,250 psig found gathering).

4. Shallow water factor

Indicated Shippers point out that the OCS Policy Statement [42] provides that new facilities located in water depths of 200 meters or greater will be presumed to be gathering.[43] Indicated Shippers state that the Commission failed to give any weight to the fact that the various Central Louisiana lines upstream of Vermilion Block 67 and the downstream laterals that are connected to the looped transmission do not extend to the deep waters of the OCS.

Commission response

As noted in the August 31 Order, the OCS Policy Statement added a new factor to the primary function test concerning facilities that are designed to collect gas produced in water depths of 200 meters or more.[44] The OCS Policy Statement creates a presumption that these deep water facilities are gathering facilities up to the point or points of interconnection with the interstate pipeline grid. There is no corollary rebuttable presumption that facilities located in shallow water are transmission. Rather, the Commission considers a facility's location in shallow water as one among several criteria in assessing the primary function. While almost all NGA-regulated pipe is located in shallow water, approximately half of all the facilities found in shallow water are NGA-exempt production and gathering facilities. Accordingly, a particular facility's placement in shallow water, standing alone, is a poor predictor of that facility's primary function (in contrast, in deep water, almost all

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[42] *Gas Pipeline Facilities and Services on the Outer Continental Shelf-Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act*, 74 FERC ¶ 61,222 (1996), order dismissing reh'g, 75 FERC ¶ 61,291 (1996) (Policy Statement).

[43] *Id.* at 61,757.

[44] 96 FERC at 61,973.

facilities are engaged in production or gathering). The shallow water location must be viewed in the context of a facility's other characteristics in order to reach any meaningful assessment of its primary function. In this case, the shallow water location of the subject facilities was not as substantial a factor as the facilities' other characteristics.

5. Integrated Pipeline System

Indicated Shippers believe that the nature of Transco's integrated pipeline system provides strong evidence in support that the primary function of Transco's entire Central Louisiana system continues to be transmission. Indicated Shippers state that there is no reasoned basis to conclude that the primary function of one portion of an integrated system is gathering, and the other is transmission.

Commission response

In Sea Robin the Commission rejected the position that the Commission should consider an entire pipeline system gathering if the "integrated" nature of the system, as a whole, is designed to transport gas from production areas to onshore locations. The Commission explained that such a finding would violate the Commission's responsibility to draw jurisdictional lines, even when the end of gathering is not easily located, as for example, when it occurs at a point internal to an overall system.[45] For the same reason, we reject the contention that the integrated nature of Transco's system precludes us from finding that a portion of the system is gathering.

6. Historical certification and business purpose

Indicated Shippers argue that the Commission erred in its conclusion that the historical certification of Transco's facilities is not relevant to the current primary function of the

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[45] 92 FERC ¶ 61,072 at 61,290.

facilities and in failing to give due weight to the business purpose of the subject facilities. Indicated Shippers are in agreement with the Commission in that the "business purpose" of the subject facilities is only one factor to consider in determining the primary function of the facilities. However, Indicated Shippers argue that because the business purpose of the pipeline provides strong evidence of a pipeline's functionalization, it should be considered a central factor. Indicated Shippers argue that where the owner of pipeline facilities is in the business of transportation for hire, and has historically operated the pipeline as an integrated interstate pipeline system, the primary function of the pipeline is most likely transmission.

Commission response

In the past, when a pipeline applied for a certificate to construct facilities, the Commission did not inquire into the pipeline's prospective use of the facilities before issuing the certificate. Consequently, many facilities that actually may perform a gathering function originally were constructed under NGA section 7 certificates. Therefore, until the Commission actually scrutinizes the facilities under the primary function test, the actual jurisdictional status of the facilities cannot be definitively determined.[46]

The offshore facilities at issue here were installed under NGA certificate authority and have continued to be functionalized by Transco as transmission for many years. Nonetheless, in making jurisdictional determinations on the OCS, and indeed, onshore as well, the physical characteristics of the particular pipeline systems are the more significant factors, and each determination must be made on the basis of its own specific fact situation.[47] Here, such non-physical

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[46] *See, CNG Transmission Corporation*, 67 FERC P61, 330, at 62,177 (1994).

[47] *Sea Robin*, 127 F.3d 365 at 371.

aspects are not compelling enough to overcome the overwhelming physical evidence

D. Challenge to the rate adjustment

In Docket Nos. CP01-368-001 and RP01-245-004, Transco seeks rehearing of the requirement that it adjust its rates to remove the cost of the facilities to be abandoned from its current rate proceeding in Docket No. RP01-245-000.[48] Pending the Commission's action on rehearing, Transco also requests that the Commission grant a limited stay of the August 31 Order's rate adjustment requirement. As discussed below, the request for rehearing on this issue is granted. Therefore, the motion for stay is moot.

Transco states that having now received the Commission's Order granting abandonment and transfer, Transco and WGP must make the modifications necessary to permit operation of these facilities on a stand-alone basis, and must negotiate contracts to govern post-spin down services on these facilities. Transco states that for a variety of reasons, it does not believe that such transfer will close until well into 2002, at the earliest.

Transco states that the August 31 Order contains no findings under either NGA Sections 4 or 5 that the subject facilities will not be in service through the test period in Docket No. RP01-245-000, or that Transco's rates to be effective September 1, 2001, will be unjust or reasonable. Transco states that Section 5(a) requires such findings before the Commission may lawfully adjust a pipeline's rates.[49] Transco states that to require Transco to remove the cost of these facilities from jurisdictional rates while such facilities continue to render jurisdictional service would be unlawful

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[48] 96 FERC at 61,978, Ordering paragraph G.

[49] 15 U.S.C. 717d(a). Transco cites *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1578-79 (D.C. Cir. 1993).

under these NGA sections, which require that a pipeline be afforded an opportunity to earn a fair return on its investment in jurisdictional facilities and to recoup its costs in rendering jurisdictional service.[50]

KeySpan, *et al.*, argue that the timing of the transfer is a matter within the control of the contracting parties and Transco's customers should not be required to continue to pay for facilities that are not necessary to provide their jurisdictional services simply because the transfer has not occurred as expeditiously as Transco had planned.

Commission response

In its application in Docket No. CP01-368-000, Transco proposed to transfer the subject facilities to WGP effective on the last business day of the calendar month following the calendar month of the issuance of [the August 31 Order], or at a mutually agreeable date thereafter. Thus, the transfer was expected to occur as early as September 28, 2001. However, the transfer did not take place at that time. The test period in Transco's current general rate proceeding in Docket No. RP01-245-000 expired on August 31, 2001, and the proposed rates became effective on September 1, 2001.[51] The subject

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[50] Transco cites *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

[51] On March 1, 2001, in Docket No. RP01-245-000, Transco filed revised tariff sheets to reflect a general NGA section 4 rate increase. The Commission exercised its discretion to accept and suspend the rates to take effect on September 1, 2001, subject to conditions and subject to refund and the outcome of a hearing. *Transcontinental Gas Pipe Line Corporation*, 94 FERC ¶ 61,360 (2001). On August 31, 2001, in Docket No. RP01-245-003, Transco filed a motion to place the suspended tariff sheets into effect on September 1, 2001. Among other things, Transco stated that it had eliminated the costs associated with facilities not in service as of August 31, 2001, but had not reflected any adjustments in the compliance rates for the subject facilities for which abandonment was granted. By order issued September 27, 2001, the Commission accepted the revised tariff sheets to be effective September 1, 2001, subject to

facilities continue to be owned by Transco, and are being operated under color of a certificate issued by the Commission. The Commission's regulations only require removal of the costs of facilities that will not be in service as of the end of the test period.[52] Hence, the Commission's regulations and ratemaking policies did not require that Transco remove the cost of those facilities and costs from the rates that went into effect on September 1, 2001, subject to refund. Accordingly, rehearing is granted. The order in Docket No. RP01-245-005, issued concurrently with the instant order, discusses the effect of the refunctionalization of the subject facilities to gathering on Transco's rates.

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refund, the outcome of the hearing established in Docket No. RP01-245-000, and the certificate proceedings in Docket Nos. CP01-34-000, CP01-103-000 and CP01-368-000. *Transcontinental Gas Pipe Line Corporation*, 96 FERC ¶ 61,345 (2001) (September 27 Order). The Commission also directed Transco to file revised tariff sheets, within 15 days of the date of issuance of that order, reflecting the removal of the costs of the facilities abandoned in the certificate proceedings.

On October 9, 2001, in Docket No. RP01-245-005, Transco filed a Request For Clarification Or, In The Alternative, For Rehearing, of the September 27 Order (October 9 Request). Transco also requested a limited stay that sought an extension of time within which to comply with the September 27 Order. The motion states that because Transco's books and records would have to be reconstructed in order to calculate the costs required by the Commission's Order, compliance is not possible within the 15-day deadline. On November 6, 2001, an extension of time was granted until 30 days after the Commission acts on Transco's October 9 Request. The Commission order in Docket No. RP01-245-005 is being issued concurrently with the instant order.

[52] Section 154.303(c)(2) of the Commission's regulations states:

> When a pipeline files a motion to place the rates into effect, the filing must be revised to exclude the costs associated with any facilities that will not be in service as of the end of the test period . . . At the end of the test period, the pipeline must remove from its rates costs associated with any facility that is not in service . . .

Nonetheless, the Commission's finding in the August 31 Order that Transco must remove the costs of the facilities that it will abandon from its prospective rates was grounded on the principal that just and reasonable jurisdictional rates cannot be based on the costs of facilities not owned by the pipeline, not in service, and not needed to provide service to jurisdictional customers. Thus, it would seem unjust and unreasonable for Transco to continue to charge rates designed to afford Transco the opportunity to recover the cost of and earn a fair return on an investment in the subject facilities at such time that it no longer owns them and no longer uses them to provide jurisdictional service. Accordingly, we shall direct Transco to show cause, within 30 days from the date of issuance of this order, why it should not be required to file revised tariff sheets and supporting workpapers containing replacement rates reflecting the removal of all costs associated with the abandoned facilities, 30 days prior to the effective date of the transfer of the subject facilities.

III. Request for clarification

Indicated Shippers ask that the point at which gathering ends and transmission begins be better identified than in the July 25 Order. Indicated Shippers state that simply identifying a particular platform is not sufficient because a more specific identification becomes critical for new interconnections to the platform. Indicated Shippers state that if Transco deems such new interconnect to be upstream of the point of demarcation between gathering and transmission, the pipeline and its affiliate could argue that a gathering fee must be paid for a very short haul of gas from one point on the platform to another. In order to avoid this sort of rate stacking, Indicated Shippers request that the Commission clarify that all of the facilities at the platform at which gathering ends are to be treated as transmission; and, only facilities upstream of the platform should be gathering. In this way Indicated Shippers state that, there will be no question

that new interconnects at the platform will not bear a gathering charge for short hauls on the platform.

Commission response

The Commission clarifies that facilities upstream of the jurisdictional demarcation platform have been found to be gathering, and facilities downstream have been found to be transmission. However, the Commission denies the request to clarify that all of the facilities at the jurisdictional demarcation platform are to be treated as transmission. An OCS platform may be constructed to serve many functions, such as an aggregation point for numerous lines, and/or to provide separation, dehydration, and other production and transmission services. Basically, facilities on the platform involved with bringing gas to the platform are gathering and facilities involved in sending gas toward shore are transmission. Facilities that separate or dehydrate are also performing production and gathering functions. Although unusual in offshore situations, compression facilities would most likely be involved in transmission. New interconnections to the platform should be functionalized accordingly.

The Commission orders:

(A) The requests for rehearing are granted or denied as discussed in this order.

(B) Pursuant to section 5 of the Natural Gas Act, Transco is directed to show cause, within 30 days from the date of issuance of this order, why it should not be required to file revised tariff sheets and supporting workpapers containing replacement rates reflecting the removal of all costs associated with the abandoned facilities, 30 days prior to the effective date of the transfer of the subject facilities.

(C) Within 15 days after WGP acquires the subject facilities deemed gathering, WGP must file an OCSLA Reporting Form and the conditions of service for each shipper

served with respect to the acquired facilities (and the services rendered through those facilities) and continue to do so thereafter, in accordance with section 330.3 of the Commission's regulations.

By the Commission.
[SEAL]
Linwood A. Watson, Jr.,
Acting Secretary.

APPENDIX J

UNITED STATES CODE ANNOTATED
TITLE 15. COMMERCE AND TRADE
CHAPTER 15B—NATURAL GAS

§ 717. Regulation of natural gas companies

(a) Necessity of regulation in public interest

As disclosed in reports of the Federal Trade Commission made pursuant to S.Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) Transactions to which provisions of chapter applicable

The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

(c) Intrastate transactions exempt from provisions of chapter; certification from State commission as conclusive evidence

The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person

from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction.

(d) Vehicular natural gas jurisdiction

The provisions of this chapter shall not apply to any person solely by reason of, or with respect to, any sale or transportation of vehicular natural gas if such person is—

(1) not otherwise a natural-gas company; or

(2) subject primarily to regulation by a State commission, whether or not such State commission has, or is exercising, jurisdiction over the sale, sale for resale, or transportation of vehicular natural gas.

CREDIT(S)

(June 21, 1938, c. 556, § 1, 52 Stat. 821; Mar. 27, 1954, c. 115, 68 Stat. 36; Oct. 24, 1992, Pub.L. 102-486, Title IV, § 404(a)(1), 106 Stat. 2879.)

UNITED STATES CODE ANNOTATED
TITLE 15. COMMERCE AND TRADE
CHAPTER 15B—NATURAL GAS

§ 717c. Rates and charges

(a) Just and reasonable rates and charges

All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is declared to be unlawful.

(b) Undue preferences and unreasonable rates and charges prohibited

No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Filing of rates and charges with Commission; public inspection of schedules

Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from June 21, 1938) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all

contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Changes in rates and charges; notice to Commission

Unless the Commission otherwise orders, no change shall be made by any natural- gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Authority of Commission to hold hearings concerning new schedule of rates

Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, State commission, or gas distributing company, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time

when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

CREDIT(S)

(June 21, 1938, c. 556, § 4, 52 Stat. 822; May 21, 1962, Pub.L. 87-454, 76 Stat. 72.)

UNITED STATES CODE ANNOTATED
TITLE 15. COMMERCE AND TRADE
CHAPTER 15B—NATURAL GAS

§ 717f. Construction, extension, or abandonment of facilities

(a) Extension or improvement of facilities on order of court; notice and hearing

Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided,* That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers.

(b) Abandonment of facilities or services; approval of Commission

No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that

the present or future public convenience or necessity permit such abandonment.

(c) Certificate of public convenience and necessity

(1)(A) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however,* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on February 7, 1942, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after February 7, 1942. Pending the determination of any such application, the continuance of such operation shall be lawful.

(B) In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular

customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

(2) The Commission may issue a certificate of public convenience and necessity to a natural-gas company for the transportation in interstate commerce of natural gas used by any person for one or more high-priority uses, as defined, by rule, by the Commission, in the case of—

(A) natural gas sold by the producer to such person; and

(B) natural gas produced by such person.

(d) Application for certificate of public convenience and necessity

Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form, contain such information, and notice thereof shall be served upon such interested parties and in such manner as the Commission shall, by regulation, require.

(e) Granting of certificate of public convenience and necessity

Except in the cases governed by the provisos contained in subsection (c) (1) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or

will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

(f) Determination of service area; jurisdiction of transportation to ultimate consumers

(1) The Commission, after a hearing had upon its own motion or upon application, may determine the service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization; and

(2) If the Commission has determined a service area pursuant to this subsection, transportation to ultimate consumers in such service area by the holder of such service area determination, even if across State lines, shall be subject to the exclusive jurisdiction of the State commission in the State in which the gas is consumed. This section shall not apply to the transportation of natural gas to another natural gas company.

(g) Certificate of public convenience and necessity for service of area already being served

Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural-gas company.

(h) Right of eminent domain for construction of pipelines, etc.

When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree

with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided,* That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000.

CREDIT(S)

(June 21, 1938, c. 556, § 7, 52 Stat. 824; Feb. 7, 1942, c. 49, 56 Stat. 83; July 25, 1947, c. 333, 61 Stat. 459; Nov. 9, 1978, Pub.L. 95-617, Title VI, § 608, 92 Stat. 3173; Oct. 6, 1988, Pub.L. 100-474, § 2, 102 Stat. 2302.)

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APPENDIX K

DOCKET NO. _____
EXHIBIT Z
PAGE 1 OF 11

N.M. OK. ARK. TX. LA.

TEXAS

LOUISIANA

MISSISSIPPI

TILDEN/McMULLEN LATERAL

CENTRAL TEXAS

NORTH HIGH ISLAND

CENTRAL LOUISIANA

SOUTHEAST LOUISIANA

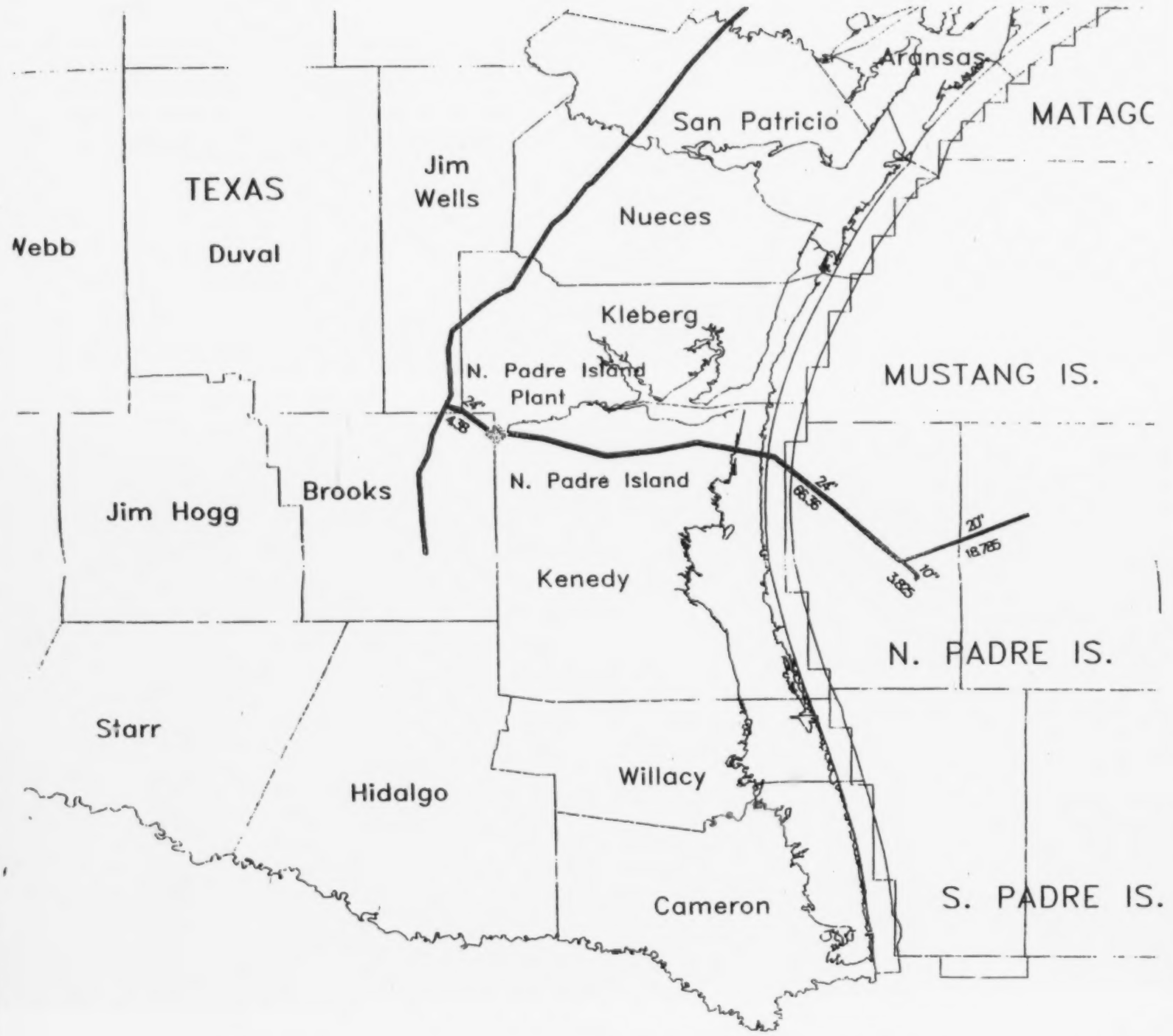
STA 80
STA 77
EMINENCE STORAGE
STA 70
STA 65
STA 54
STA 50
WASHINGTON STORAGE
STA 45
STA 40
STA 35
STA 44
JOHNSON BAYOU PLANT
STA 60
STA 32
STA 63
STA 62
BLACK BAYOU PLANT
STA 30
STA 24
MARKHAM PLANT
STA 20
TILDEN PLANT
BEE COUNTY PLANT
GOEBEL LATERAL
KING RANCH PLANT
N. PADRE ISLAND PLANT
N. PADRE ISLAND
UTOS
HIOS
EAST CAMERON
VERMILION
WEST CAMERON
EUGENE ISLAND
HIGH ISLAND
GALVESTON
MATAGORDA
BRAZOS
MUSTANG IS.
CORPUS CHRISTI
EAST BREAKS
GARDEN BANKS
SHIP SHOAL
SOUTH TIMBALIER
EWING BANK
MISSISSIPPI CANYON
ATWATER
MAIN PASS
VIOSCA KNOLL
WEST DELTA
SOUTH PASS
GREEN CANYON

LEGEND
- FACILITIES TO BE RETAINED BY TRANSCO
- FACILITIES TO BE ABANDONED TO WOP-OC
- COMPRESSOR STATIONS TO BE RETAINED BY TRANSCO
- COMPRESSOR STATIONS TO BE ABANDONED TO WOP-OC
- SEPARATION AND DEHYDRATION STATIONS TO BE ABANDONED TO WOP-OC
- SEPARATION STATIONS TO BE ABANDONED TO WOP-OC

Transco
TRANSCONTINENTAL GAS PIPE LINE CORPORATION

KEY MAP
LOCATION OF GATHERING FACILITIES
TO BE ABANDONED

Drawn By JLM	Date 12-14-95	Approved By T.P. Cross Manager of Planning
Checked By RJB	Date 12-14-95	
Approved By Drafting HKM	Date 2-20-96	
Approved By	Sheet of	Dwg. No. Z-1-11



LEGEND

- GATHERING FACILITIES TO BE TRANSFERRED TO WGP–GC
- FACILITIES TO BE RETAINED BY TRANSCO
- COMPRESSOR STATIONS TO BE RETAINED BY TRANSCO
- SEPARATION, DEHYDRATION OR PROCESSING PLANTS

LOCATION OF GATHERING FACILITIES TO BE ABANDONED NORTH PADRE ISLAND GATHERING SYSTEM

Williams
GAS PIPELINES
Transco

Drawn By TLJ	Date 11-10-00	Approved By	
Cheked By TWS	Date 11-10-00	Manager of Planning	
Approved By Drafting	Date		
Approved By	Sheet of	Dwg. No. 11	

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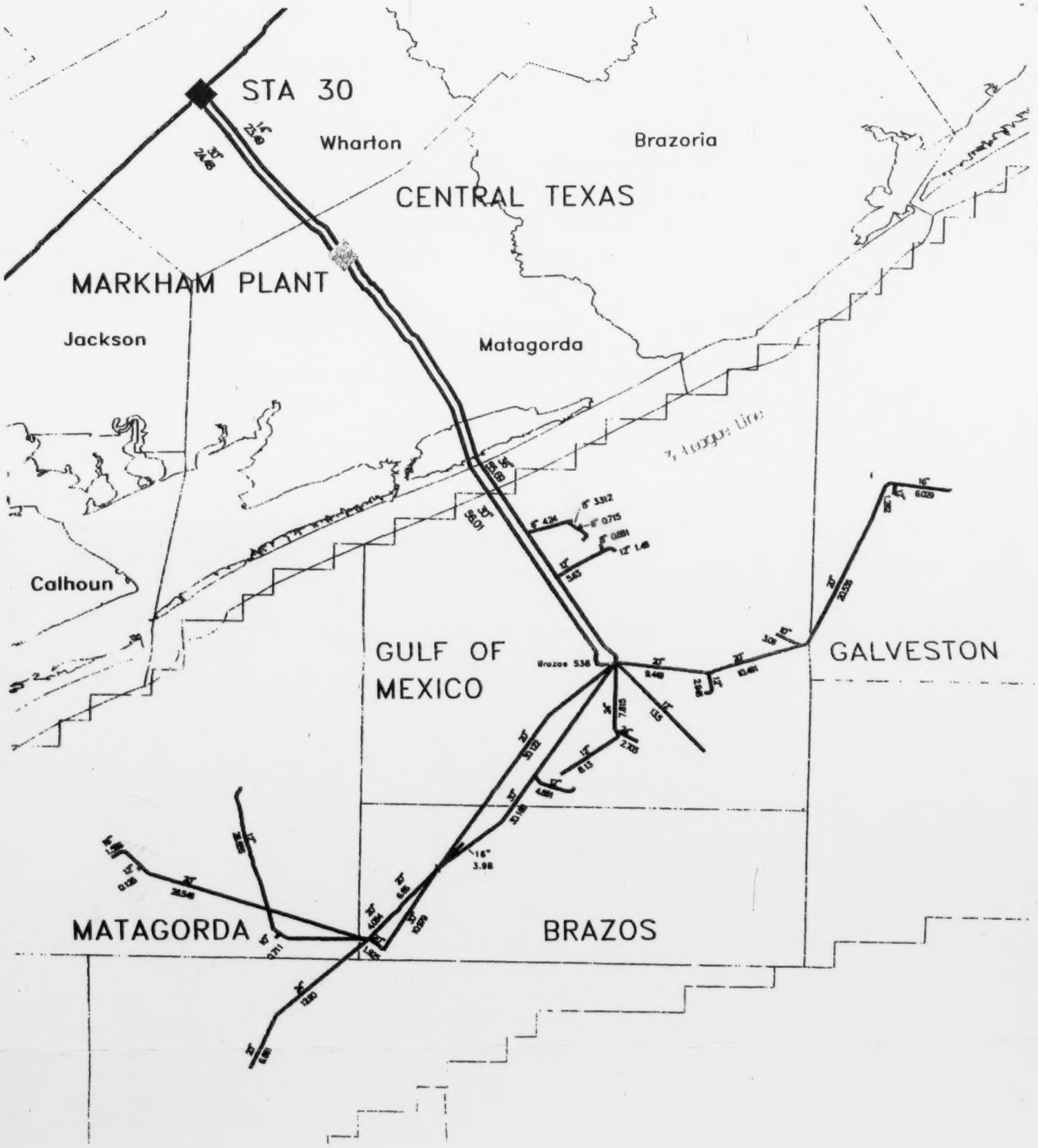

LEGEND

- GATHERING FACILITIES TO BE TRANSFERRED TO WGP-GC
- FACILITIES TO BE RETAINED BY TRANSCO
- COMPRESSOR STATIONS TO BE RETAINED BY TRANSCO
- SEPARATION, DEHYDRATION OR PROCESSING PLANTS

LOCATION OF GATHERING FACILITIES TO BE ABANDONED CENTRAL TEXAS GATHERING SYSTEM

Drawn By TLJ	Date 11-10-00	Approved By
Cheked By TWS	Date 11-10-00	Manager of Planning
Approved By Drafting	Date	4
Approved By	Sheet of	Dwg. No.

Williams

GAS PIPELINES
Transco

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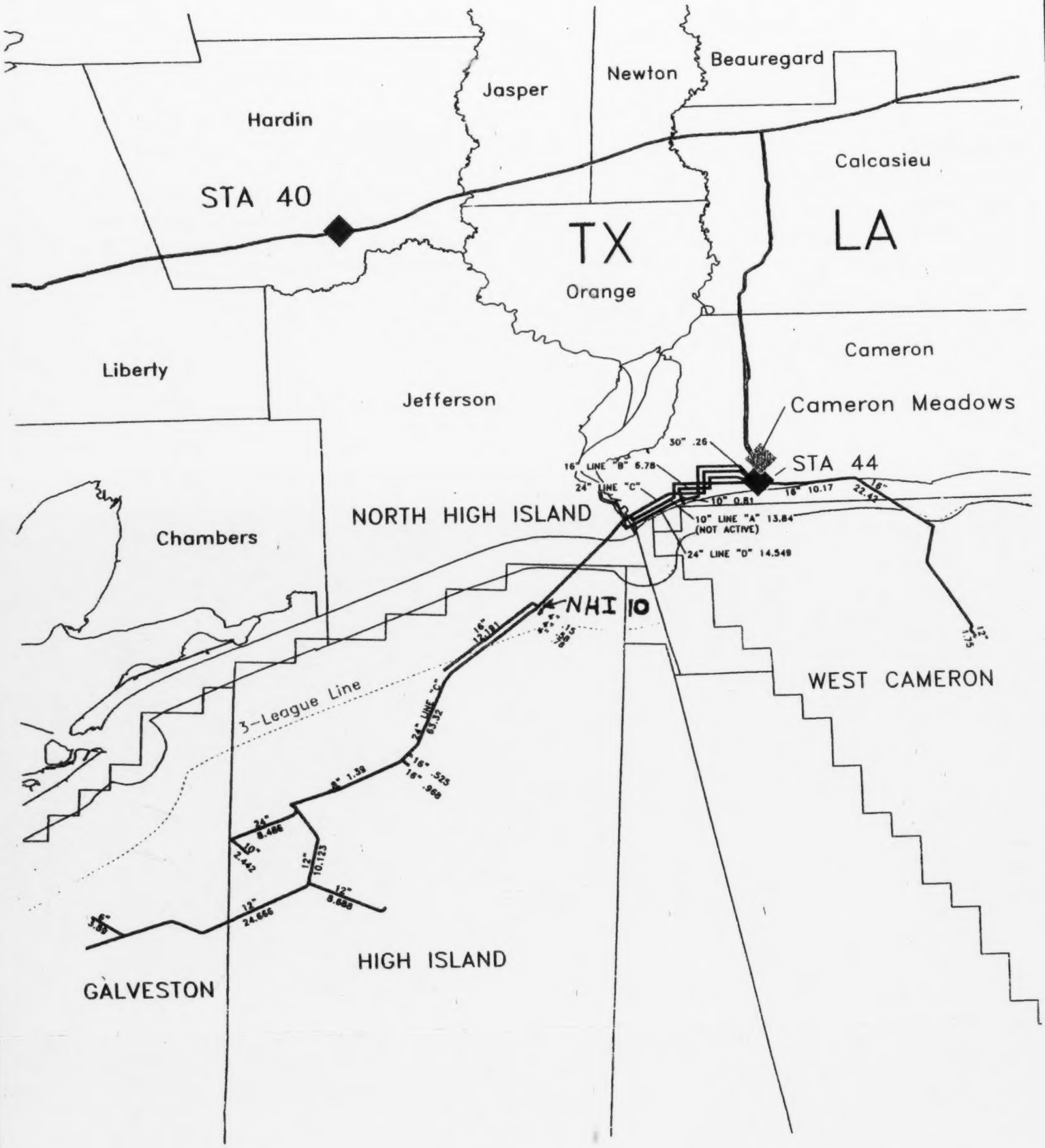

LEGEND

- GATHERING FACILITIES TO BE TRANSFERRED TO WGP-GC
- FACILITIES TO BE RETAINED BY TRANSCO
- COMPRESSOR STATIONS TO BE RETAINED BY TRANSCO
- PROCESSING PLANT

LOCATION OF GATHERING FACILITIES TO BE ABANDONED NORTH HIGH ISLAND/ WEST CAMERON GATHERING SYSTEM

Williams
GAS PIPELINES
Transco

Drawn By TLJ	Date 03-01-01	Approved By	
Cheked By TWS	Date 03-01-01	Manager of Planning	
Approved By Drafting	Date	Dwg. No	5
Approved By	Sheet of		

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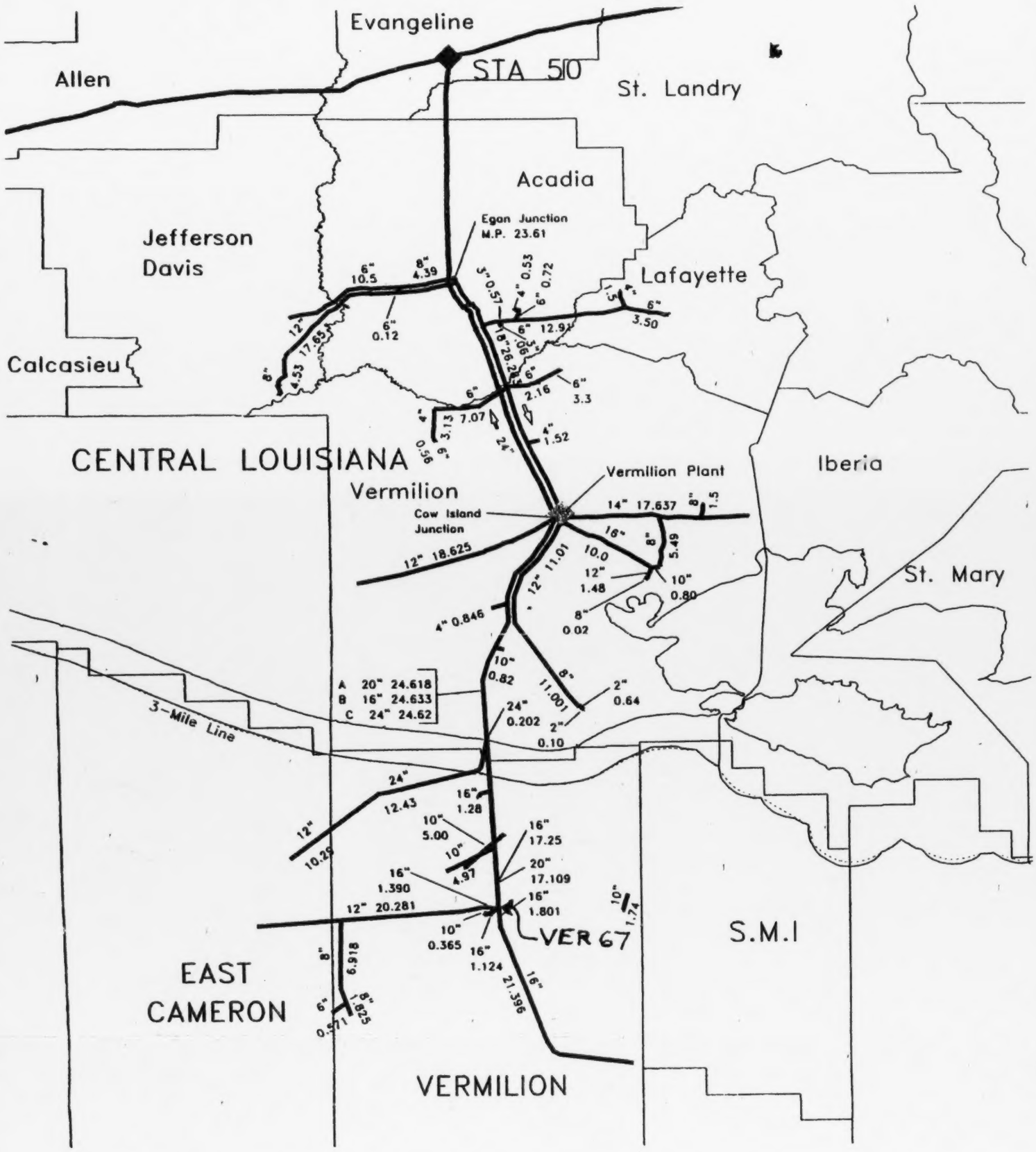

LEGEND

- GATHERING FACILITIES TO BE TRANSFERRED TO WGP-GC
- FACILITIES TO BE RETAINED BY TRANSCO
- COMPRESSOR STATIONS TO BE RETAINED BY TRANSCO
- SEPARATION, DEHYDRATION OR PROCESSING PLANTS

LOCATION OF GATHERING FACILITIES TO BE ABANDONED CENTRAL LOUISIANA GATHERING SYSTEM

Williams
GAS PIPELINES
Transco

Drawn By TLJ	Date 4-23-01	Approved By	
Checked By TWS	Date 4-23-01	Manager of Planning	
Approved By Drafting	Date	Dwg. No.	6
Approved By	Sheet of		

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